PAPERS

OF THE

AMERICAN HISTORICAL ASSOCIATION

VOLUME I.

NEW YORK & LONDON
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1886

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A NEW HISTORICAL MOVEMENT.

THE American Historical Association, which was called to its first annual meeting at Saratoga on September 9th, under the auspices of the Social Science Association, has shown its American character by declaring independence and adopting a constitution. The object of the new Association is the promotion of historical studies in this country, not in a narrow or provincial sense, but in a liberal spirit which shall foster not merely American history, but history in America. There are already many historical societies throughout the land, but they are devoted to interests more or less sectional or local. There are State historical societies, County, and even Town societies, that for many years have been doing historical work of great value, although they are necessarily restricted in most cases to the historical ground represented by the society's name. There is clearly room for an historical society which shall be neither local nor sectional, but truly national. We understand that this enlarged idea of an American historical association, representing all parts of the country and history in general, is the outgrowth of the catholic spirit represented by some of our American colleges and universities, where students from various sections learn national and liberal ideas and catch glimpses of the world through the science of history. The American Historical Association is not, however, to be restricted to academic circles ; it will open its ranks to historical specialists and active workers everywhere, whether in this country or in Europe, in State or local historical societies, or in any isolated individual field. In the words of the constitution, which is remarkable for its brevity, "Any person approved by the Executive Council may become a member by paying $3.00" which is the annual fee. The payment of $25.00, under the above condition of executive approval, secures life-membership and exemption from the annual dues.

This form of discounting the future, and of settling with the treasurer of an active and growing association with promise of long life, would be good economy for young American specialists in history.

There were enrolled at the organization in Saratoga 41 active members, one of them for life. No honorary members in this country are to be elected, and none in Europe have as yet been chosen; but the Executive Council has selected 120 well-known American students of history, living in different parts of the country, to whom invitations to accept active membership will shortly be extended by the Secretary. This number of select members will be increased during the coming year by the Council, which has full power to pass final or suspensive judgment upon nominations that may be communicated to this body through the Secretary. The Council consists of the regular officers of the Association, viz.: the President, Andrew D. White, President of Cornell University; two Vice-Presidents, Professors Justin Winsor, of Harvard College, and Charles Kendall Adams, of the University of Michigan; Secretary, Dr. Herbert B. Adams (whose address is Johns Hopkins University, Baltimore); Treasurer, Clarence Winthrop Bowen, (whose address is *The Independent*, New York City); and four associates in Council, Mr. Charles Deane of Cambridge, Mr. William B. Weeden of Providence, Professors E. Emerton, of Harvard College, and Moses Coit Tyler, of Cornell University. In this Executive Council, which has entire charge of the general interests of the Association, the academic element appears to dominate, but men of affairs are also represented, and the name of Charles Deane is of itself sufficient to command the confidence of State historical societies throughout the country.

It may not be known to many of our readers, for it certainly was known to but few members of the American Historical *Association* at the time of its organization, that there was once in this country an "American Historical *Society*," having its seat in Washington, D. C., and occasional meetings in the House of Representatives at the Capitol. The Society was founded in the year 1836. Its first President was John Quincy Adams, and its most active member was probably Peter Force, to whom this country owes a great debt of gratitude for the publication of many rare tracts relating to our early colonial history, and for his laborious work in collecting the "American Archives." A large portion of the first volume of the Transactions of the American Historical Society, which was exhibited at Saratoga by Doctor Parsons, delegate from the Rhode Island Historical Society,

consists of reprints by Peter Force of such ancient memoirs and historical tracts as appear in his own well-known collections, so that we may properly associate the work of the first American Historical Society, with the most valuable line of historical publication ever undertaken in this country—for the individual work of Peter Force, in connection with this Society of Washington residents and politicians, who met in the House of Representatives, developed into a national undertaking. Although publication of the "American Archives" by the general government was long ago suspended, it is important to remember that many volumes of state papers collected by Peter Force yet remain for publication, and that possibly some influence can be exerted upon Congress by the new Association toward the resumption of a good work left unfinished. The old Society, while national in name, was really a local organization of residents in Washington City, with a few honorary members in the individual States and in various European countries. The new Society is to be a national association of active workers from many local centres of academic learning and corporate influence. Although without a local habitation, it will doubtless soon have a good name in the land which gave it birth, and it will probably enjoy a longer life and greater usefulness than did its Washington predecessor, a Society whose lifework was confined to a few annual addresses by distinguished politicians and to reprints of papers not its own.

An active, creative spirit is the one thing needful in the American Historical Association which is now to be. Other societies, together with the State and National governments, will continue to attend to the publication of archives; but this new Association is designed for original work. A pamphlet will soon be issued by the Secretary containing a report of the proceedings at Saratoga, September 9th, 10th, the constitution of the Association, abstracts of all the papers read, and President White's public address on "Synthetic Studies in History," which advocates the synthesis of special work into general forms—an idea quite in harmony with that of the American Historical Association, which is but a general union of the best elements of all our special societies and our local schools of history. Other publications will follow, probably in the form of separate monographs, which may be ultimately combined into serial volumes. For this purpose the annual fees of a large Society, with few current expenses, will no doubt accomplish much, but the endowment of research in special lines, and the establishment of a publication fund, are imperatively needed.

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OF THE

AMERICAN HISTORICAL ASSOCIATION

VOL. I. NO. 1

REPORT OF THE ORGANIZATION AND PROCEEDINGS

SARATOGA, SEPTEMBER 9–10, 1884

BY HERBERT B. ADAMS

Secretary of the Association

NEW YORK & LONDON
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AMERICAN HISTORICAL ASSOCIATION.

SECRETARY'S REPORT

OF THE

ORGANIZATION AND PROCEEDINGS,

SARATOGA, SEPTEMBER 9–10, 1884.

THE CALL FOR A CONVENTION.

IN June, 1884, after some correspondence between individuals interested in the formation of an American Historical Association, the following call for a convention at Saratoga, September 9, 1884, was issued by the undersigned, acting as a provisional committee:

"It is proposed to organize, under the auspices of the American Social Science Association, during the next annual session at Saratoga, September 8–12, 1884, an American Historical Association, consisting of professors, teachers, specialists, and others interested in the advancement of history in this country. The objects of the proposed Association are the exchange of ideas and the widening of acquaintance, the discussion of methods and original papers. Such an Association will certainly prove of great advantage to American teachers and students who are now more or less isolated in their fields of work. Friends of history can profit by association with one another and also with specialists in the kindred subjects of social science, jurisprudence, and po-

litical economy, which are represented at this annual meeting in Saratoga. By conference with co-workers historical students may widen their horizon of interest and cause their individual fields of labor to become more fruitful. The advantages of meeting at Saratoga are obvious. It is an excellent environment, attractive to all. The Social Science Association has already established itself at Saratoga, and offers the advantages of its name and existing organization, the use of its hall for historical sessions, and special rates at the United States Hotel during the week of the Social Science convention.

"Arrangements will be made for the presentation of a few original papers, in abstract, at the first meeting of the American Historical Association, which will be held in Putnam Hall, Saratoga, Tuesday, September 9, 1884, at 4 P.M.

"Signed: John Eaton, President American Social Science Association; F. B. Sanborn, Secretary American Social Science Association; C. K. Adams, Professor of History, University of Michigan; M. C. Tyler, Professor of History, Cornell University; H. B. Adams, Associate Professor of History, Johns Hopkins University."

This call was published in the annual circular of the American Social Science Association, and was sent to all the members of that Society—over three hundred in number,—comprising many persons interested in the progress of historical and political studies in America. The call was also printed in a form distinct from the Social Science circular, and was sent to many persons not members of that Association. Although doubtless many writers, students, and teachers of history were passed over in consequence of defective methods of distribution and an inadequate supply of circulars, yet it was intended by the committee to extend the call to historical specialists, antiquarians, and professors of history throughout the country. The circular was sent, for example, to all contributors to (1) "The American Statesmen" Series, (2) "The American Commonwealths" Series, and (3) "The Narrative and Critical

History of America." Circulars were also sent to State historical societies and to many local organizations, to public libraries and reading-rooms, to representative journals in various States, and to magazines specially devoted to history. The call was reprinted in full by the *Magazine of American History*, August, 1884, and the press of the country strongly encouraged the project of forming an American Historical Association. As indicative of public opinion, the notices published in *The Nation*, *Springfield Republican*, *Boston Advertiser*, *Boston Herald*, *The Press* (Philadelphia), and the religious journals of the country, were both encouraging and suggestive.

As influences tending to encourage and shape the idea of an historical organization of a national character, some of these press notices deserve to be placed on record by the Association. The *Springfield Republican* printed the following editorial note :

"An American Historical Association is one of the felt wants of this country, and it is proposed to form such an association during the next session of the American Social Science Association at Saratoga, September 8th–12th. The opportunity is favorable, as the occasion brings together a great many scholars and educators who naturally take interest in the study of history and the working of causes on events, and the others who will be drawn to Saratoga for this special object will share the advantages of the Social Science Association, its hall for their meetings, and its special rates at the United States Hotel. Arrangements are to be made for starting the new association with a number of historical papers in abstract, at the organizing meeting, September 9th."

The Independent contained an editorial notice as follows :

"As the number of American scholars and specialists increases, it is but natural that they should seek to form associations where the special branches of study in which they are interested can receive the combined attention of all who are eminent in one sphere or the other. Thus, we have our American Philological Association, our American

Oriental Society, our American Association of Science, our American Social Science Association, etc. It is now proposed to add to these an American Historical Association, to consist of professors, teachers, specialists, and others interested in the advancement of historical study and research in this country. Many excellent local historical societies exist throughout the country, but they are insufficient; a national society is needed. A call for the organization of such an association has been issued under the auspices of the Social Science Association, and signed by its president and secretary and by the professors of history in the University of Michigan, in Cornell University, and in Johns Hopkins University. The first meeting of the new association will be held in Saratoga on the 9th of September, 1884. The advantages to the country of such an association are too obvious to need expression or enumeration. Matters of national historical importance are constantly coming up, which must often be neglected simply because they do not seem to come within the province of any existing organization. It would seem that such an organization as an American Historical Association should play an important part in the proposed celebration of the fourth centenary of the discovery of America. From this point of view, at least, the call is timely."

The Nation of September 4th contained the following "Note":

"The American Historical Association, which is to be organized this year in connection with the Social Science Association, will hold its first meeting at Saratoga in Putnam Hall on Tuesday, September 9th, at 4 P.M. After a preliminary session, the friends of the new organization will adjourn for subsequent meetings, during the Social Science convention, at such time and place as may be most convenient. Communications are expected from Professors Charles Kendall Adams, of Michigan University, and Moses Coit Tyler, of Cornell, and from representatives of Harvard, Yale, and Johns Hopkins. President Andrew D. White, of Cornell University, will be present at this meeting of

the Association, and has been invited to address it. Dr. Frank Austin Scott, Professor of History in Rutgers College, and for a long time associated with Mr. George Bancroft, will present a paper upon 'The Law of Constitutional Development in the United States.' Other communications upon the progress of historical research in this country will be announced at the first meeting of the Association. It is hoped that this organization of American students and teachers of history will prove highly advantageous, not only for the promotion of historical study in new and profitable lines of inquiry, but also for the widening of acquaintance and good-fellowship among workers in the same field. It is not so much the reading of papers that advances science in these American and British associations—it is the association itself; it is the meeting of men and the exchange of ideas."

The *Boston Herald*, two days before the meeting of the Association, published an editorial from which the following extracts are taken:

"The organization of the American Historical Association at Saratoga next Tuesday, in connection with the Social Science Association, is understood to mean an attempt to give historical studies in this country a larger scope and purpose, and to place them upon a scientific basis. * * * What is now needed is the meeting of men engaged in these studies and their interchange of ideas. The historian is usually an isolated individual who has grown gray before he becomes widely known. It is high time that he came out of his seclusion and breathed the wholesome air of public affairs. By conference with their co-workers, historical students may widen their horizon of interest, and cause their individual fields of labor to become more fruitful. Their association with specialists in the kindred fields of social science, jurisprudence, and political economy will be helpful in the same direction. The prospect is that the first meeting will be distinguished in the attendance of leading historical students, and that in the exchange of ideas, the widening of acquaintance, the discussion of methods and of

original papers, the future historians of the country will find themselves greatly strengthened. It will be chiefly a gathering of the younger school of writers, like Prof. C. K. Adams, Prof. Moses Coit Tyler, Judge Chamberlain, President White, Dr. Frank Austin Scott, and representatives from Harvard, Yale, and Johns Hopkins, but it will be representative of all the best interests of American historical scholarship, and will for the first time give them a national and adequate organization. Too much cannot be made of such an institution. It registers the rise of a new generation of Americans and the growth of a better method in the study of history."

PRELIMINARY BUSINESS MEETING.

Pursuant to the "Call," which had been widely published in the ways above described, a convention of historical specialists, students, and professors assembled at Saratoga under the auspices of the Social Science Association, the Secretary of which, Mr. F. B. Sanborn, publicly announced the historical programme. Previous to the first regular assembly in Putnam Hall, a private gathering of the friends of the Historical Association was held in one of the small parlors of the United States Hotel, to discuss the question of organization, *i. e.*, whether the new Society should be an independent body, or a section of the Social Science Association. There were present at this discussion about twenty-five persons, including President Andrew D. White, of Cornell University, and President Francis A. Walker, of the Massachusetts Institute of Technology; Professors Justin Winsor and E. Emerton, with Instructors Channing, Scott, and Francke, from Harvard College; Professors M. C. Tyler, T. F. Crane, from Cornell University; Professor Charles Kendall Adams, from the University of Michigan; Dr. H. B. Adams, of Johns Hopkins University; Professor Allen C. Thomas, of Haverford College; Hon. John Eaton, United States Commissioner of Education; Charles Deane, LL.D., Vice-President of the Massachusetts Historical Society; Dr. Charles W. Parsons and William B. Weeden,

Esq., of the Rhode Island Historical Society; Mendes Cohen, Esq., Secretary of the Maryland Historical Society; Clarence Winthrop Bowen, Ph.D., of *The Independent*, and several other college graduates and men of affairs.

The meeting was called to order by Professor Moses Coit Tyler, who nominated Mr. Justin Winsor to act as Chairman, which nomination was carried *viva voce.* Professor Charles Kendall Adams then nominated Dr. Herbert B. Adams to act as Secretary *pro tempore;* this was also carried. The Chairman then made a few remarks, of which the following is a brief summary:

We have come, gentlemen, to organize a new society, and fill a new field. Existing historical societies are local, by States and divisions of States, and give themselves to the history of our own country. The only one not plainly by its title local, the American Antiquarian Society, is nevertheless very largely confined in its researches to New England subjects, though it sometimes stretches its ken to Central America and the Northwest. But our proposed name, though American by title, is not intended to confine our observations to this continent. We are to be simply American students devoting ourselves to historical subjects, without limitation in time or place. So no one can regard us as a rival of any other historical association in this country.

We are drawn together because we believe there is a new spirit of research abroad,—a spirit which emulates the laboratory work of the naturalists, using that word in its broadest sense. This spirit requires for its sustenance mutual recognition and suggestion among its devotees. We can deduce encouragement and experience stimulation by this sort of personal contact. Scholars and students can no longer afford to live isolated. They must come together to derive that zest which arises from personal acquaintance, to submit idiosyncrasies to the contact of their fellows, and they come from the convocation healthier and more circumspect.

The future of this new work is in the young men of the historical instinct,—largely in the rising instructors of our colleges; and I am glad to see that they have not failed us in the present movement. Along with me from Harvard came hither such; and I perceive other colleges have sent the same sort of representatives. Those of us who are older are quickened by their presence.

The Chairman thereupon requested a statement of the object of the special meeting. Professor M. C. Tyler said the main question related to the dependent or independent status of the Historical Association, and thereupon introduced the following resolution in order to test the will of the convention:

"*Resolved*, That it is advisable to form an American Historical Association upon an independent basis."

William A. Mowry, editor of the *School Journal*, first supported this motion on general grounds, and was followed by William B. Weeden, of Providence, who said that the proposed Association must interest three classes of men, viz.: those writing, those teaching, and those studying history. The Society ought to be in fullest coöperation with the Social Science Association, whose interests bordered upon those of the Historical Association; but the latter ought not to be an integral part of the Social Science organization. Professor Charles Kendall Adams said there had been some correspondence and discussion touching the formation of an American Historical Association; that the call for the first meeting under the auspices of the Social Science Association was merely a prudential measure; and that the present representation seemed to justify independence rather than alliance. Professor Allen C. Thomas, of Haverford College, spoke of the prominence of historical studies in this country, and of the growing strength of this department in American colleges, urging these considerations in favor of establishing at once an independent and vigorous organization. Mr. Charles Deane, of the Massachusetts Historical Society, said it was a question of expediency rather than of principle whether the Association should constitute itself upon an independent footing. If the new body was to be formed from the Social Science Association, or if it was the natural outgrowth of the same, it might properly remain a subsidiary section; but if it contained new blood and was under no special obligations to the Social Science Association, it might quite as well declare independence at the outset. The Chairman assured the convention that there were no entangling alliances, and that the circular had been sent to very many persons outside the Social Science Association.

Hon. John Eaton, President of the American Social Science Association, took the floor in opposition to the resolution. He said the tendency of scholarship in this

country was toward excessive specialization. He thought students should seek larger relations than their own field of work afforded. The Social Science organization enabled scholars who are working in different fields, *e. g.*, in jurisprudence, political economy, social economy, and education, to compare results and to profit by one another's labors. There was perfect independence for the individual sections in the Social Science organization. The President exercised no control whatever over the secretaries of departments. The various sections were equal allies for the propaganda of social science; and through the publication of the collective proceedings by the Association, a wider public was reached than was naturally open to any individual section. There could be perfect independence within the Social Science Association. An Historical Section could meet where and when it pleased. There was a certain prestige attached to large and well-organized associations; scientific bodies ought not to be organized for too narrow specialities. There ought to be general coöperation in allied subjects. The American Association for the Advancement of Science had practically ignored historical questions and the social questions growing out of history. It had dealt rather with things prehistoric and with American archæology. A new section had indeed lately been instituted in the interest of political economy, but it opened with only two hearers. The British Association, on the contrary, has always laid great stress upon the historical side of scientific work, and there are indications that in this country history, instead of being at the end of the sciences, is going to be at the head.

Clarence Winthrop Bowen, Ph.D., said that he asked a professor of history in New York City whether he meant to attend the Historical Association at Saratoga. The professor said "No," for he had understood that it was to be merely a section of the Social Science Association; he preferred an independent organization. Mr. Bowen thought that this opinion represented the prevailing idea among students and friends of history throughout the country.

There was certainly room for a national historical association. He favored a representation wider than that afforded by the colleges, and would be glad to see vice-presidents, or directors, of the Association chosen from each State, and to hear annual reports of the progress of historical work in different sections of this country. Professor Emerton of Harvard College, in answer to the argument of General Eaton, said that no one realized more keenly than himself the narrowing effects of excessive specialization; but he thought that history was different from such specialties as prison reform, charities, etc., for history was itself a very broad subject, capable of as many subdivisions as social science. President White of Cornell University agreed with General Eaton as to the advantage of specialists in historical and social science meeting in a place like Saratoga, which is so generally attractive; but he thought the membership of the American Historical Association would soon be as large as that of the body under whose auspices we were now assembled. A happy compromise could be attained if the Historical Association, organized upon an independent footing, should be called together for its next annual meeting at Saratoga shortly before or immediately after the session of the Social Science Association, so that members of the two bodies might attend each other's meetings, and thus the various sections of historical, sociological, and economic work profit by scientific intercourse.

President Francis A. Walker, of the Massachusetts Institute of Technology, said the main advantage of connection with a large and well-organized body of inquirers, like that represented by the Social Science Association, lay in the continuity of work secured by the entire body, for individual sections and individual members often flagged in their activity. The experience of the Social Science Association had shown that the main current of interest was now in this section, now in that; but, however variable the individual sections, the Association as a whole went steadily forward, the strong aiding the weak. But for this coöperation of various departments there would have been, perhaps, some break in the conti-

nuity of each. A section is carried on by the energy of a few men, and when these fail, all fails. It is much safer for a new association, which has not tried its strength, to start in connection with an older and stronger body; but if the strength of the American Historical Association is already well assured in point of numbers and in moneyed contributions, immediate independence might prove a safe policy. The acting Secretary then said that the letters received by different members of the provisional committee had strongly favored a national society upon an independent basis. There had never been any question in the minds of the provisional committee as to the ultimate policy of the association; it was a policy of independence as soon as prudence justified it. Public opinion, the character and strength of the present representation, the number and quality of the papers contributed this year, indicated that the time for independence had already come. It was important, however, to strengthen the American Historical Association by future meetings in an attractive environment like Saratoga, and by coöperation with all branches of social science, which is naturally allied with history and politics.

The question was then called, and the resolution as proposed, that it was advisable to form an American Historical Association upon an independent basis, passed in the affirmative, and was made unanimous.

It was then moved by Professor C. K. Adams that the Chair appoint a Committee of Five to report at the first public session, in Putnam Hall, at 4 P.M., on a constitution for the American Historical Association. This motion passed by a unanimous vote. The Chair appointed Professor C. K. Adams, Clarence W. Bowen, Esq., Professor E. Emerton, William B. Weeden, Esq., and Professor M. C. Tyler. The Secretary was afterward added to this Committee on the Constitution, upon motion of Mr. Weeden.

It was moved by Professor M. C. Tyler that the acting Chairman and the Secretary *pro tempore* continue in their respective offices at the afternoon meeting, or until permanent organization could be perfected. The motion was

carried. Professor Emerton moved that the acting Secretary prepare a programme of the papers contributed this year to the proceedings of the American Historical Association, and announce the same at the first public session in Putnam Hall. This motion was also carried. The meeting then adjourned to meet for a public session at 4 P.M.

FIRST PUBLIC SESSION.

SARATOGA, *September* 9, 1884.

At four o'clock, Mr. Winsor, acting as Chairman, called to order the first public session of the proposed American Historical Association, meeting under the auspices of the Social Science Association, in Putnam Hall. The acting Secretary reported the results of the preliminary meeting, and announced the programme of exercises. Professor Charles Kendall Adams, Chairman of the Committee on the Constitution, being called upon to report, said that the committee had not yet finished its work, and moved that it be allowed to continue the same, and that when the present meeting adjourned it should adjourn to meet in business session the next day, September 10th, at 9 A.M., in one of the small parlors at the United States Hotel. This motion prevailed. The Chairman, Mr. Winsor, introduced Hon. Andrew D. White, President of Cornell University, who delivered an address "On Studies in General History and the History of Civilization," which is printed in full as No. 2 of the First Series of publications by the Association. The following is a brief abstract of the address:

Mr. White began by stating the fact that, as a rule, each country in history has special studies which its scholars can conduct better than those of any other country can, but that there is a great field in the general history of civilization open upon equal terms to the historical scholars of all countries. This field of general, philosophical, synthetical study he claimed was superior to special analytical study, and that both should go together. Proofs of this were adduced of a theoretical and practical sort, the latter being an exhibit of the work in both fields in various nations, and showing that the two go together, and that there is no great growth of one without a corresponding growth of the other. He assigned the first place at present to Germany, both for special and general work. He then took up the matter of general methods and tests im-

posed by the necessities of general history upon special history, showing that each field furnished tests for the other. As to purposes and methods, while giving great weight to the opinions of Herbert Spencer upon the study of history as laid down in his work on education, Mr. White insisted upon the necessity of careful limitations to those statements as regards facts worthy of study, giving examples of facts apparently useless but really of the very greatest importance, and among these various illustrations from ancient and modern history, especially from the recent history of the United States. With reference to this point also, while attributing great value to what Mr. Spencer calls descriptive sociology, he showed that many of the most vital facts are of a kind very difficult to be tabulated, and not likely to be inserted in tables of descriptive sociology such as those already published under the sanction of Mr. Spencer's name. He next took the special limitations of historical study in America, giving a remark of an American statesman that all history must be rewritten from an American point of view, which, while qualifying in some respects, he asserted, contained the germ of a truth. The next point was in regard to the necessity of general historical studies for giving breadth of view in American political life. He asserted that in the early days of the Republic such leaders as John Adams, Thomas Jefferson, and others were especially strengthened by such studies ; that this was also the case in the transition period with such men as Calhoun, John Quincy Adams, Everett, and Webster ; and in the recent period, with William H. Seward and Charles Sumner. He attributed the want of broad historical views among American statesmen at present to certain material necessities which have arisen since the Civil War, but showed that other interests were now arising absolutely requiring the study of American institutions and policies in the light of history.

As to instruction in history, he dwelt upon the fact that but few of the American universities give as yet any adequate historical instruction, but that there is a healthful tendency toward a better state of things. This tendency, he asserted, was in accordance with the development of historical thought in this age. In the last century, leading thinkers were philosophers ; in this age, they are historians. Stress was laid upon Draper's idea that the greatest problem of humanity must be solved, not by metaphysical study of the individual man, but by historical study of men in general in their historical connections. In speaking of the development of the proposed American Historical Association, he expressed the hope that universities and colleges would form strong centres for its influence, and that at meetings, while special studies in American history should receive close attention, general studies upon the history of mankind and the history of civilization should have a section especially devoted to them. Such studies cannot be without a healthful influence upon the educational interests of the country on the one hand, and upon the better growth of statesmanship on the other.

After President White's address, Professor C. K. Adams read an extended abstract of a thesis, prepared under his direction, by George W. Knight, when a candidate for the degree of Ph.D. at the University of Michigan. The subject

was "Federal Land-Grants for Education in the Northwest Territory." The paper will appear in full as the third regular publication of the American Historical Association. The following is a brief *résumé* of its contents:

The origin and nature of the Federal endowment of education is well known to students of American history, but few have investigated how the States have utilized the grants. It was to the old Northwest Territory that Congress made the first grant for a seminary of learning. This territory contains at the same time the poorest and the best institutions in the Union. It would be an error to suppose that when, in July, 1787, the feeble Congress of the Confederation gave to the Ohio Company "two townships of good land for the support of a literary institution," they expected any great results from the gift, or anticipated that they were setting a precedent to be followed as often thereafter as a new State should be admitted to the Union. When once the lands had passed from the possession of Congress, the future weal or woe of the embryonic colleges depended entirely on the State. The only restriction was that the endowment should not be spent. The writer then reviewed the legislation of different States in regard to these endowments, showing how unwise legislation and poor management has crippled the institutions in many States. A brief study of the subject has indicated five causes for the failure to realize the full possibilities of these land-grants. An undue haste in organizing colleges has compelled a corresponding haste in disposing of the lands. The absence of restrictions on the Legislature has permitted it to place any price it chose upon the lands, and has generally resulted in extremely low prices. The Legislatures have been tempted to force sales in order to serve other purposes than those for which the grants were made. A carelessness in providing means of investing the funds has caused losses. The general lack of interest on the part of the people has enabled interested persons to obtain legislation to suit their special desires. The younger States of the West have been wise enough to enact constitutional safeguards against all of these evils. Other evils will undoubtedly arise, but it can hardly happen that the experience of the Northwest Territory will be repeated by the younger members of the Union.

FINAL ORGANIZATION.

The adjourned meeting was called to order for a business session at 9 A.M., September 10th, in a small parlor at the United States Hotel, by the acting Chairman, Mr. Winsor. There were present, in addition to those mentioned at the first preliminary meeting, President S. L. Caldwell of Vassar College, Judge Mellen Chamberlain, Librarian of the Boston Public Library, Judge Charles A. Peabody of New York, Judge Batcheller of Saratoga, Professor Austin Scott of Rutgers College, Professor Herbert Tuttle of Cor-

nell University, Dr. J. F. Jameson and Davis R. Dewey, of Johns Hopkins University, Henry E. Scott of Harvard University, Calvin H. Carter of Waterbury, Ct., William Henry Davis of Cincinnati, Ohio, and several other gentlemen. The acting Secretary said that the main item of unfinished business was the report on the Constitution. Professor C. K. Adams was then called upon to report in behalf of the committee, and presented the following articles:

CONSTITUTION

OF THE

AMERICAN HISTORICAL ASSOCIATION.

I.

The name of this Society shall be the American Historical Association.

II.

Its object shall be the promotion of historical studies.

III.

Any person approved by the Executive Council may become a member by paying three dollars; and after the first year may continue a member by paying an annual fee of three dollars. On payment of twenty-five dollars, any person may become a life-member exempt from assessments. Persons not residents in the United States may be elected as honorary members, and shall be exempt from the payment of assessments.

IV.

The officers shall be a President, two Vice-Presidents, a Secretary, a Treasurer, and an Executive Council consisting of the foregoing officers and of four other members elected by the Association. These officers shall be elected by ballot at each regular annual meeting of the Association.

V.

The Executive Council shall have charge of the general interests of the Association, including the election of members, the calling of meetings, the selection of papers to be read, and the determination of what papers shall be published.

VI.

This Constitution may be amended at any annual meeting, notice of such amendment having been given at the previous annual meeting, or the proposed amendment having received the approval of the Executive Council.

Upon motion of General John Eaton, this Constitution was unanimously adopted without amendment. General Eaton then moved that the Association proceed to the election of officers under the rules of the Constitution, and that a committee of three on nominations be appointed by the Chair, which motion was carried. The Chair appointed upon this committee General Eaton, Professor T. F. Crane of Cornell University, and Professor Austin Scott of Rutgers College. After consultation the committee on nominations reported the following board of officers:

President :—ANDREW D. WHITE, President of Cornell University, Ithaca, N. Y.

Vice-Presidents :—JUSTIN WINSOR, Librarian of Harvard University, Cambridge, Mass.; CHARLES KENDALL ADAMS, Professor of History, University of Michigan, Ann Arbor, Mich.

Secretary :—HERBERT B. ADAMS, Associate Professor of History, Johns Hopkins University, Baltimore, Md.

Treasurer :—CLARENCE WINTHROP BOWEN, No. 251 Broadway, New York.

Executive Council (in addition to the above-named officers) :—WILLIAM B. WEEDEN, Providence, R. I.; CHARLES DEANE, Cambridge, Mass.; MOSES COIT TYLER, Professor of American History, Cornell University, Ithaca, N. Y.; EPHRAIM EMERTON, Professor of Ecclesiastical History, Harvard University, Cambridge, Mass.

Upon motion of Professor Tuttle, of Cornell University, the chairman of the committee on nominations was instructed to cast the ballot of the Association for this board. General Eaton thereupon cast the ticket approved by the Association, and the board of officers, as above reported, was declared elected by Mr. Winsor, who thereupon yielded the chair to President Andrew D. White, who said a few words of encouragement to the new Association.

Professor M. C. Tyler moved that a recess of ten minutes be allowed, wherein persons desiring to join the new Association might present their names to the Secretary and pay their fees to the Treasurer. The motion was carried *nem. con.* During the recess, or at subsequent times during the day (September 10th), the following names were enrolled. The list comprises the names of persons actually present at business meetings of the Association, together with a few others who had requested enrollment by proxy.

ORIGINAL MEMBERS

OF THE

AMERICAN HISTORICAL ASSOCIATION.

Enrolled at its Organization, September 10, 1884.

Adams, Professor Charles Kendall, University of Michigan, Ann Arbor, Mich.
Adams, Dr. Herbert B., Johns Hopkins University, Baltimore, Md.
Bowen, Clarence W., Ph.D., *The Independent*, Broadway, New York City.
Caldwell, S. L., LL.D., President Vassar College, Poughkeepsie, N.Y.
Carter, Hon. Calvin H., Waterbury, Conn.
Chamberlain, Judge Mellen, Boston Public Library, Mass.
Channing, Dr. Edward, Harvard College, Cambridge, Mass.
Cohen, Mendes, Cor. Sec., Maryland Historical Society, Baltimore, Md.
Crane, Professor T. F., Cornell University, Ithaca, N. Y.
Davis, William Henry, Esq., Cincinnati, Ohio.
Deane, Charles, LL.D., Cambridge, Mass.
Dewey, Davis R., Johns Hopkins University, Baltimore, Md.
Eaton, Hon. John, U. S. Commissioner of Education, Washington, D. C.
Egleston, Melville, Esq., 195 Broadway, New York City.
Emerton, Professor E., Harvard College, Cambridge, Mass.
Francke, Dr. Kuno, Harvard College, Cambridge, Mass.
Gay, Sidney Howard, Esq., West New Brighton, Staten Island, N. Y.
Harris, William T., LL.D., Concord, Mass.
Hayes, Hon. Rutherford B., Fremont, Ohio.
Jameson, Dr. J. F., Johns Hopkins University, Baltimore, Md.
Johnston, Professor Alexander, Princeton, N. J.
King, Hon. Rufus, Cincinnati, Ohio.

Kingsbury, F. J., Esq., Waterbury, Conn.
Levermore, Charles H., Johns Hopkins University, Baltimore, Md.
Markham, J. C., Esq., Jersey City, N. J.
Parsons, Dr. Charles W., Providence, R. I.
Peabody, Judge Charles A., 60 West 21st Street, New York City.
Phelan, James, Esq., 56 Court Street, Memphis, Tenn.
Read, General Meredith, care of Messrs. John Munroe & Co., 32 Nassau Street, New York City.
Rice, Professor R. A., Williams College, Williamstown, Mass.
Scott, Professor Austin, Rutgers College, New Brunswick, N. J.
Scott, Henry E., Harvard College, Cambridge, Mass.
Thomas, Professor Allen C., Haverford College P. O., Pa.
Tuttle, Professor Herbert, Cornell University, Ithaca, N. Y.
Tyler, Professor Moses Coit, Cornell University, Ithaca, N. Y.
Walker, General Francis A., President Massachusetts Institute of Technology, Boston, Mass.
Weeden, William B., Esq., Providence, R. I.
White, Hon. Andrew D., President Cornell University, Ithaca, N. Y.
Winsor, Justin, Librarian, Harvard College, Cambridge, Mass.
Wright, Col. Carroll D., Bureau of Statistics, Boston, Mass.

PRIVATE SESSION.

After the enrolment of members, the American Historical Association, now fully organized, met for a private literary session in the large parlor of the United States Hotel, at 10 A. M.,—President White in the chair; thirty persons present. The Secretary announced the programme of exercises for the day, which was to conclude the first convention of the American Historical Association.

The first paper, presented in abstract, was by Dr. Edward Channing, Instructor of History in Harvard College, on "Town and County Government in the English Colonies of North America." This was the Toppan Prize Essay at Harvard College, for the year 1883, a prize of $150, for the best paper on one of three assigned subjects in political science, being offered to graduate students who have pursued a regular course of study at Harvard University during the year preceding the award of the prize, and also to undergraduate seniors. This prize essay has been published in full in the Johns Hopkins University Studies in Historical and Political Science, 2d Series, No. 10. (October, 1884), the essay having been read before the Historical and Political Science Association of that University, February 22, 1884. The following is a brief abstract:

Dr. Channing maintained that the founders of the English colonies of North America brought to their new homes the experience in the management of local

concerns which they had inherited from their ancestors, and which they applied to local government on this side the water so far as the peculiar conditions (economic, ecclesiastic, and agrarian) of their colonial environment would permit. The institution which was the connecting link between institutions of the mother country and those of the colonies was, in his opinion, the parish as it existed at common-law in England in 1580–1640. Parish-meeting was the prototype of the Massachusetts town-meeting, while the committee of assistance developed into the select vestry, not only of Virginia but of England of the present day, and offers the only suggestion as to the origin of the selectmen of New England.

He then described the founding of one Massachusetts town, wherein at an early day the parish-meeting of old England was reproduced in all essentials. With regard to Virginia no such history could be given—owing, probably, to the lack of material,—for a careful study of the laws of that colony seems to show that something very similar to the parish-meeting was held in an early time, but that this had been superseded by a committee elected by the parishioners, which, by being empowered to fill vacancies in its own body, had become the select vestry. He closed by giving a minute comparison of the local systems of England in 1600, and of Virginia and Massachusetts in 1765, which gave strong confirmation to the idea that the Massachusetts town with its town-meeting and selectmen, and the Virginia parish with its select vestrymen, were both the children of the same parent—the English parish at common-law in 1600.

A discussion of this paper followed. Mr. Charles Deane, Judge Chamberlain, and Dr. H. B. Adams participated. Mr. Charles Deane, Vice-President of the Massachusetts Historical Society, expressed the great pleasure he had felt in listening to the paper which had just been read. As connected with the subject of the origin of New England towns he had been requested, since he came into the room, to give some account, briefly, of the treatment of this subject by the writer of the report of the Council at the April meeting of the American Antiquarian Society, Judge Aldrich, who held to the view that these institutions were quite unlike any existing models, but were original creations formed to meet the exact wants of the settlers of a new and uninhabited country, and the founders of a state. This opinion is coincident with that of the late Judge Joel Parker, expressed in a paper on "The Origin, Organization, and Influence of the Towns of New England," read before the Massachusetts Historical Society in 1865. Judge Aldrich cited the opinions of various writers, who

held different theories—notably the late Richard Frothingham, of Charlestown, in a paper read before the Antiquarian Society, Professor Stubbs, Mr. Freeman, Sir Henry Maine, and others, who thought they had discovered the original model of New England towns in certain primitive institutions of Europe. He also cited the opinions expressed by the President of the American Association for the Advancement of Science, in his inaugural address at the opening meeting of the Association in 1880, who, in saying that New England was the birthplace of American institutions, added that here was developed the township with its local self-government, that upon the township was formed the county, that upon the counties was formed the State, and upon the State the nation. He thought this a most remarkable genesis of town, county, State, and nation, being a theory borrowed from the scientist, who would speak of towns as the primordial cells out of which the State and nation have been evolved. Judge Aldrich then proceeded to show that the right to establish New England towns was derived from the colonial government, which granted them the land and gave to them all the rights of local government which they possessed, that towns are in every instance dependent on the State government for their existence, and that they grew under the guardianship of the State and gradually developed according to their needs.

Mr. Deane said that this was a very imperfect sketch of Judge Aldrich's paper, but he had no time or ability, being thus suddenly called upon, to give even an adequate *résumé* of the paper.

Judge Mellen Chamberlain, Librarian of the Boston Public Library, said he had little or nothing to add to the interesting essay to which we have just listened. Discrimination is needful in treating of the origin of our institutions. Family pride may be gratified by the assurance of the genealogist that one's ancestors came over with the Conqueror, or that their names are recorded on the rolls of Battle Abbey; and so it is with national pride, which seeks to connect national institutions with the beginning of things.

What did the first comers to these shores bring with them? So far as those who came to Massachusetts-Bay colony are concerned, we know with some exactness; for the records have preserved a list of articles to be provided for the colonists, in view of their intended emigration into a wilderness. They were such things as the projectors of the enterprise supposed would be needed by the corporation in the prosecution of its work in subduing a new country, selling lands, and planting the gospel.

Of course they needed all kinds of clothing, implements for building habitations and for working the soil; for surveying lands, and seeds for planting them. Nor were cattle and domestic animals overlooked. They made a memorandum of these wants. They needed a minister, inasmuch as the conversion of the heathen was one of the reasons specified for granting the charter. A minister is on their schedule. The sale of lands was one of the means by which the capitalists expected reimbursement for their investment, and they contracted with a surveyor for his services. They hoped to make pitch, salt, and wine, and skilled laborers in these departments of industry were to be engaged. Such were some of their needs, and these things they brought with them.

But they brought neither an English town nor a town-meeting, nor a board of selectmen; neither an established church nor parochial schools; neither representative government, and perhaps not even the common-law. Yet in time they came to have all these. But at first so little did they understand the essential nature of town governments that when they undertook to establish them they violated a fundamental principle of English law, which forbids a corporation, which they were, to create corporations, which towns were. They assumed a prerogative which belongs to the king only. So little did they anticipate the necessity of representative government that, when they established it, they clearly violated their charter and usurped powers not granted by it. All members of the company were voters, but without the power of delegating their authority

to representatives. Did they bring the common-law with them? Their first law book cites the authority of Moses—not that of Lord Coke; and when the people had expressed their desire for a body of law, Governor Winthrop, in 1639, gave as one of the reasons for non-compliance, that it was thought best that a common-law should arise out of their necessities rather than be transferred from England.

It would seem, therefore, that our ancestors brought with them not English institutions, but English principles. They brought with them English cereals and English flora. Whether they planted these or not would depend upon circumstances, but when planted, whether soon or late, they grew in the soil of New England as they had grown in the soil of old England. And so they brought with them English principles which entered into and unfolded themselves in all the institutions which have grown up among us.

As has been said, they brought with them neither a town, nor a church, nor a school, but when these came to be needed they were formed on the principles which regulated the construction and growth of their English, perhaps their Saxon, equivalents or prototypes. Race qualities are never wholly lost, nor are they essentially modified; and when circumstances require action under new conditions, that action, in its principles, will conform to the customary action of the race.

Dr. H. B. Adams, of Johns Hopkins University, said that Dr. Channing's explanation of the origin of New England towns in the common-law parish of the sixteenth century was quite in harmony with his own view concerning the "Germanic Origin of New England Towns," originally expressed in a monograph bearing that title. Dr. Channing had strongly and justly emphasized the English parish as the immediate parent of the New England town, but Bishop Stubbs and other writers had clearly shown that the English parish was but an historical transformation of the earlier English *Tun*, which was again but a survival of the Germanic village community. Early Germanic institutions stand related to English and American institutions, as

ancient Germany and mediæval England stand related to modern America. It would be as difficult to account for English modes of self-government in our towns, parishes, and counties upon this side of the Atlantic, without reference to English origins, as it would be to account for our English speech, our common law, and our Christian religion upon the theory of local adaptations to American wants. Not only have New England towns their actual historic prototypes, but there is not a feature of early New England town life which had not some corresponding feature in the municipal institutions of old England. Town-meeting, selectmen, parish committees, constables, tithingmen, wardens, field-drivers, haywards, fence-viewers, hog-reeves, swineherds, cowherds, shepherds, dog-whippers, deer-reeves, corders of wood, cullers of fish, sealers of weights and measures, valuers of wheat, inspectors of brick, and inspectors of strangers, clerk of the hay-market, town clerk, town treasurer, town crier, and even the town pump,—all these institutions, and many more besides them, which may be found in the local history of New England, may also be found in the local history of Old England. And yet some writers would have us believe that New England town institutions are Yankee inventions.

What constitutes a New England town if not a complex of local and self-governing municipal institutions? Surely the colonial legislatures of Plymouth and Massachusetts did not create the idea of town- and parish-meeting, which is the very heart of our local life. Certainly Dorchester and Charlestown and Salem did not invent selectmen or the idea of a parish committee. The truth is, these institutions sprang into being as naturally as English wheat on New England soil. Local government in towns and villages was already planted here in many instances before the colonial government saw fit to recognize it. There are many old Massachusetts towns that were never formally recognized at all, and yet there they stand to this day; they need no defence in law, no reiteration of fact. Undoubtedly the Massachusetts Company, which was originally a joint-stock

company, the historical outgrowth of the merchant guild of mediæval cities, exercised paramount authority over the towns around Massachusetts Bay; but whether this mercantile *corporation* of Massachusetts created these *towns* in law or in fact is quite a different matter. No *ex post facto* patent can explain the genesis of local institutions in the ancient town of Plymouth, and no chartered corporation nor colonial law can explain the archaic communal institutions either of the Plymouth or of the Massachusetts towns. There are facts in New England local life which are best explained, not by colonial law, but by the common law of England.

Mr. Charles H. Levermore, a Yale graduate, now holding a Fellowship in the Historical Department of the Johns Hopkins University, read a paper on "The Founders of New Haven." This essay was a selection from the introductory pages of a monograph upon "The Republic of New Haven." The work, which is yet unfinished, is based upon a laborious personal examination of the New Haven Town Records from 1638 to the present day. All of these archives, subsequent to the year 1650, are still in manuscript. The results of this research will be embodied in contributions to the Johns Hopkins University Studies in Historical and Political Science, Third Series, and also in a chapter on the "New Haven Municipality" in the forthcoming "History of New Haven," to be issued under the editorial supervision of the Rev. E. E. Atwater. The following is an abstract of the essay read:

The roots of the Quinnipiac colony derived nourishment from widely sundered soils, from Kent, from Herefordshire, from Yorkshire, but especially from the Puritan congregation in St. Stephen's Church, Coleman Street, London, where John Davenport ministered, and where Theophilus Eaton was a parishioner. Any survey of the continuous development of New Haven is incomplete that fails to do justice to these two men. Around their vigorous personalities the original settlement clustered, and their virile impress is not to be effaced. Mr. Davenport's intellectual lineaments were sketched. He was a well-nurtured, well-cultured man, judicious in action, and capable of inspiring feelings of loyal attachment. An aristocrat in the true sense of the word, he felt and spoke as a king among men. His decisions, when once determined, were added by him to the stock of positive knowledge, and were upheld with a

confidence and persistence that brooked no contradiction, admitted no exception. As a Calvinist, he distrusted Humanity. A comparison between the Rev. Messrs. Hooker and Davenport shows that Hooker was naturally democratic, devoted to English traditions of popular rule, a political as well as a religious Puritan. But Davenport, though of finer fibre than Hooker, was a republican because he was first a Non-conformist.

After adverting to the resemblances between Davenport and John Cotton, and to the spirit with which the former encountered the changed conditions of existence, the paper closed with a portraiture of the Moses of Mr. Davenport's Israel, Theophilus Eaton. Naturally conservative, Mr. Eaton's experience in mercantile life as a manager of men heightened his distrust of the turbulence and tyranny so manifest, upon the one hand and the other, in English public life. As Puritans, Eaton and Davenport had learned to despise and dread English laws and precedents, too often the instruments of oppression. But in the theocracy that they instituted, class distinctions were at once narrow and fundamental, and a ruling caste of Brahmans was created.

Mr. Eaton's independent spirit was responsible for the abolition of jury-trials. Like the elder Winthrop, he believed in the exaltation of the Magistracy, and in the concentration of power in the hands of the few. He was cautious and dignified, a man of indomitable energy, and obstinate even to arrogance. Outside the circle of his friends he was impartially condescending. The irritated Stuyvesant complained: "He rips up all my faults as if I were a scholeboy." But those to whom Mr. Eaton opened his soul have left their witness of his gentleness, integrity, and lovable manliness. The connection of both Eaton and Davenport with the mercantile and educational development of their community was touched upon. No mistakes in their methods can tarnish the attractiveness of their moral and intellectual strength.

President White remarked that ability seemed to be an inheritance of the Davenport family. He knew some of them who had occupied positions of honor in the community, and it was an interesting fact that their most prominent characteristics were the very ones that Mr. Levermore had ascribed to their eminent ancestor. He recognized, in particular, the firm will, the tenacity of purpose, and the tendency to uphold individual judgment as absolute truth. There might be an interesting study of the Davenport genealogy which would trace the re-appearance of these intellectual lineaments in each generation.

Professor Crane of Cornell University read a paper on "Some New Sources of Mediæval History," of which the following is an abstract:

The study of mediæval history can be pursued with unusual advantages and profit by the American student, owing to the absence of national and religious

prejudices, which, in Germany, France, and England, have produced distorted views and thrown discredit upon this branch of studies. This study is at present too much neglected in this country; the mediæval period being either entirely overlooked in our schools, or a very limited portion of it being incorrectly taken as typical. The field should be a very attractive one to American scholars, both from the large amount of new material recently published, and also from the new methods applied to old material. For example, local traditions, popular songs and folk-tales may often contain historical elements. In Sicily the memory of Dionysius, of Frederick II., of the Sicilian Vespers, is still preserved by the people; and sometimes these popular versions contain details not to be found in written history. A still more curious source of mediæval history is to be found in the habit preachers of that time had of enlivening their sermons by the introduction of stories. These were generally of little historical value, but collections were soon made of anecdotes for the use of preachers, and some of these contain invaluable materials for history.

This new method of study will react favorably upon the study of our own history, and encourage the collection of local traditions, folk-songs and tales, of which an excellent beginning has already been made in Allen's slave-songs, Newell's songs and games of American children, Mr. Harris's "Uncle Remus," etc.

Dr. Francke, of Harvard University, gave a report of the progress of the *Monumenta Germaniæ Historica*, that great collection of German historical sources of the middle ages, which was founded in 1819 by the private munificence of the noble Baron vom Stein, but is now supported by the German as well as the Austrian Government. The work is divided into the following five sections: Scriptores, Leges, Diplomata, Antiquitates, Epistolæ; each section is under the care of a prominent scholar, supported by several assistants. Among the recent publications of the section of Epistolæ, which is under the direction of Professor Wattenbach, of Berlin, Dr. Francke mentioned a large collection of hitherto unknown letters, of the popes Gregory IX. and Innocent IV., copied in the Vatican archives and published by Dr. Rodenberg. The Antiquitates are under the guidance of Professor Dümmler, of Halle, who recently published a very valuable collection of Latin poetry of the time of Charlemagne. The Diplomata, under Professor Sickel, of Vienna, contain now the imperial documents as far as the Saxon period; most remarkable documents have been reproduced in fac-similes. The sections of both the Leges and the Scriptores have their headquarters in Berlin, and are led

by Professor Waitz, who is also the president of the whole association. Among the most remarkable publications of the Leges is Dr. Zeumer's collection of the so-called Formulæ, by which people of the middle-ages made up for the want of a general code. Dr. Zeumer's edition surpasses de Rozière's well-known work in correctness of the text as well as in arrangement of the materials. The last volumes of the Scriptores contain extracts from the French and the English writers of the twelfth and thirteenth centuries, as far as they concern German affairs. Dr. Holder-Egger, who has done very valuable service in editing these volumes, is now preparing the first complete edition of Salimbene's important chronicle. Besides this a collection of the polemic pamphlets of the eleventh and twelfth centuries, and a critical edition of the famous Liber Pontificalis are in preparation. The latter is to be given by Professor Waitz himself, and it is believed that he will make Muratori's edition henceforth superfluous.

The *Monumenta* comprehend now about forty volumes in folio and large quarto. This work is a sign of the uprising of national spirit, which has displayed itself in Germany, especially since the foundation of the new Empire.

Professor C. K. Adams said he could not refrain from expressing the gratitude he felt, and what he believed to be the gratitude of every member of the Association, at hearing this interesting account of what is being done by the distinguished historical scholars of Germany to make the records of their country accessible to students of history everywhere. All who have had occasion to use the *Monumenta* are aware not only of the great intrinsic importance of the documents there preserved, but also of the rare discrimination and scholarship with which they have been selected and edited. The work, as one of the very highest importance, is entitled to our grateful recognition. May we not esteem it as a happy omen that this Historical Association thus receives at its first meeting what it may fairly regard as in some sense the encouraging greeting of that distinguished association of historical scholars in Germany? It

must add to the pleasure of all those present to have so interesting an account—and what is in every way remarkable, in such choice and faultless English, by one who has been only a few weeks among English-speaking people—of the great work, in the prosecution of which he has himself been associated.

Mr. Winsor gave an account of the incipiency and progress of the *Narrative and Critical History of America.* The success of the coöperative plan, by which specialists were brought to present in unison the various phases of the history of Boston, all subordinated to the direction of an editor, suggested the application of a similar combination to the writing of the History of the American Continent. In distinctive treatment of the theme, however, the plan of the *America* is quite different from the *Memorial History of Boston*; indeed, different from any existing history of large scope, inasmuch as the chief aim of the book is to offer a critical and bibliographical examination of all the sources of information, and an exposition of the authorities based on original material, or presenting in some distinguishable way the more common knowledge of the subject. The narrative of events is not overlooked, but is given as a condensed summary of the best existing knowledge. The graphic illustrations are to be very numerous, and nothing in the way of imaginary or idealized pictorial design is to be allowed. Conceiving that the early maps, as illustrating the waning of error and the gradual development of truth in respect to geographical ideas, are a most important source of original material, which has been largely neglected by historians, the editor provides a more thorough examination of the early Cartography than has been before made, while facsimiles and sketches of very many maps are given.

The editor has behind him a Committee of Conference, appointed by the Massachusetts Historical Society, consisting of the Hon. Robert C. Winthrop, Rev. George E. Ellis, D.D., Charles Deane, LL.D., Professor H. W. Torrey, and Francis Parkman. The writers selected represent the prin-

cipal historical, antiquarian, and archæological societies in the country, and some of those in Europe whose field covers American subjects. Eight large volumes are so far provided for, and of these the third and fourth, pertaining to the English, French, Portuguese (in part), and Swedish discoveries and settlements, are already printed, but not yet published. The second volume, covering the early Spanish history of the continent, is now going through the press, and two other volumes are in progress.

Dr. H. B. Adams, of Johns Hopkins University, exhibited a volume of historical proceedings which had been brought to Saratoga from the library of the Rhode Island Historical Society by Dr. C. W. Parsons. Dr. Adams said it might interest the members of the American Historical *Association* to learn that there was once in this country an "American Historical *Society*," having its seat in Washington, D. C., and occasional meetings in the House of Representatives at the Capitol. The Society was founded in the year 1836. Its first President was John Quincy Adams, and its most active member was probably Peter Force, to whom this country owes a great debt of gratitude for the publication of many rare tracts relating to our early colonial history, and for his laborious work in collecting the "American Archives." A large portion of the first volume of the Transactions of the American Historical Society consists of reprints by Peter Force of such ancient memoirs and historical tracts as appear in his own well-known collections, so that we may properly associate the work of the first American Historical Society with the most valuable line of historical publication ever undertaken in this country—for the individual work of Peter Force, in connection with this Society of Washington residents and politicians, who met in the House of Representatives, developed into a national undertaking. Although publication of the "American Archives" by the general government was long ago suspended, it is important to remember that many volumes of state papers collected by Peter Force yet remain for publication, and that possibly some influence can be exerted upon Congress by

the new Association toward the resumption of a good work left unfinished. The old Society, while national in name, was really a local organization of residents in Washington City, with a few honorary members in the individual States and in various European countries. This new Society is to be a national association of active workers from many local centres of academic learning and corporate influence. Although without a local habitation, it will doubtless soon have a good name in the land which gave it birth, and it will probably enjoy a longer life and greater usefulness than did its Washington predecessor, a Society whose life-work was confined to a few annual addresses by distinguished politicians, and to reprints of papers not its own. An active, creative spirit is the one thing needful in the American Historical Association which is now to be. Other societies, together with the State and National governments, will continue to attend to the publication of archives; but this new Association is designed for original work.

SECOND PUBLIC SESSION.

At four o'clock in the afternoon the Association met for its last session, which was open to the public, President White in the chair. Letters were read by the Secretary from Bishop C. F. Robertson, of Missouri, and from the Secretaries of various historical societies, commending the organization of the American Historical Association and promising cordial support. Professor Moses Coit Tyler delivered an address on "The Influence of Thomas Paine on the Popular Resolution for Independence."

The student of the American Revolution has to confront a notable problem presented by the transition which American public opinion made during the last six months of 1775 and the first six months of 1776, from abhorrence and disavowal of the idea of independence, to its complete adoption and promulgation. Prior to April 19, 1775, no public body and no public man had spoken of independence except to protest against it. On May 26th, the very Congress which then resolved that the colonies "be immediately put into a state of defence," also voted "an humble and dutiful petition to his Majesty," and declared themselves as "ardently wishing for a restoration of harmony." The Americans who fought at Bunker Hill on the 17th of June fought not for inde-

pendence, but for the overthrow of an unjust ministerial policy. Washington's commission as Commander-in-chief, on the 19th of June, contained no intimation that he was to fight for independence; while his military associates in Virginia, who sent him a letter on the 20th of July, prayed that all his "counsels and operations" might be directed by Providence "to a happy and lasting union between us and Great Britain." As late as the 19th of October, when Dr. Jeremy Belknap visited the patriot camp, he prayed publicly for the king, and seemed surprised to find that this was no longer agreeable to many in the army. On the 25th of December the Legislature of New Hampshire declared that "aiming at independence" was a thing "which we totally disavow." And yet in little more than six months from that disavowal the public mind had been quite carried over to the resolution for independence.

How is this rapid transition to be accounted for? Of course many influences were at work to produce it;—greatest of all, the alienating policy of the king and ministry, and the harsh proceedings of their troops. But among all the influences toward independence, operating between January and July, 1776, the student cannot fail to recognize that of Thomas Paine's pamphlet, "Common-Sense." The object of this paper is to trace that influence as indicated, not in later assertions or denials, but in the correspondence and newspapers of the time.

Paine had arrived in this country in December, 1774, an obscure and impoverished English adventurer, thirty-seven years old, and chiefly anxious "to procure a subsistence at least." In just one year this stranger had so well mastered the American problem that he was able to take the lead in its discussion by writing "Common-Sense." This was first published anonymously early in January, 1776. The pamphlet was happily named. It undertook simply to apply common-sense to a technical, complex, but most urgent and feverish problem of constitutional law. In fact, on any other ground than that of common-sense, the author was incompetent to deal with the problem at all; since, of law, of political science, and even of English and American history, he was ludicrously ignorant. But for the effective treatment of any question whatsoever under the light of the broad and rugged intellectual instincts of mankind, —man's natural sense of truth, of congruity, of fair-play,—perhaps no man then in America, excepting Franklin, was a match for this ill-taught, heady, and slashing English castaway.

Mr. Tyler then proceeded to give an analysis of the pamphlet, together with citations from it, to show the tact, humor, plausibility, and force with which it met the common objections to independence, and appealed to the self-respect and ambition of the American people for a national career of their own. Having thus indicated how exactly the pamphlet was adapted to the intellectual need of the hour, the speaker gave in detail and in chronological order numerous extracts from letters and newspapers between January and June, 1776, as evidence of the enormous immediate influence of the pamphlet; culminating in the statement of William Gordon, on June 7th, to the effect that of all the "publications which * * * have promoted the spirit of independency," none had done "so much as the pamphlet under the signature of 'Common-Sense.'" This statement of Gordon's, made on the very day on which Lee's resolutions for independence were introduced into Congress, completes the

chain of contemporary testimony as to the influence of Thomas Paine on the popular resolution for independence.

Professor Austin Scott of Rutgers College then read a paper on "Constitutional Growth in the United States," a summary of lectures originally delivered before students in Baltimore. The following is a brief abstract:

The force which gives the unity of continuous development to the political life of the American people has an origin deeper than the causes which divide American history into distinct periods, deeper than the consciousness of any one generation, and deeper than the hopes and fears and actions of parties. This formative principle may be termed the *Federative Principle*. Carrying the etymology of the word "federative" back of the Latin *fœdus*, with the limited meaning of league or compact, to the Sanskrit "bandh," in which lies the single thought of union, and adding the causative ending "ative," we have the union-forming principle, that which produces a constant uniting. The Federative Principle implies the existence of opposing tendencies active within a superior agency, which is capable of regulating their mutual aggression and of securing their harmony. Over the two historical forces, *Nationalism* and *Localism*, the Federative Principle asserts its supremacy, and in the Constitution of the United States gives them *simultaneous*, *correlated*, and *adequate* expression.

The principle takes its rise in the beginning of that process of differentiation by which English national self-government became in America at once national and local. In every stage of the growth of self-government in America, Nationalism and Separatism were to a greater or less degree conditioned each upon the other. For example, an American national feeling had its germ in the common feeling of responsibility for local self-government in which the several colonies shared. Further, the early attempts at union were measures of defence for the separate colonies. Again, the self-consciousness which the French war of 1760 developed throughout the colonies as a whole, found its points of concentration in the local centres. So, too, the resistance in 1765 against the Stamp Act, and later against the Tea Tax. The national spirit which declared independence was nurtured in the local schools of self-government, and the Declaration itself was a protest against nationalism as the exclusive idea in the State.

The Articles of Confederation were an imperfect expression of the Federative Principle. The relations of its two factors were not yet so adjusted as to allow of their free reciprocal action, but both were recognized, and in such a way that each secured the other from ultimate destruction. The separate States are confessedly not equal to the task of governing a continent, yet the spirit of localism in this confederation dominates the sources of the national life, and allows of no system of national law adequate to the acknowledged jurisdiction of Congress. But the fourth of the articles, by providing "for the people of the different States in this Union" the fullest inter-citizenship, begins the formation of indefeasible relations between the national spirit and individuals, and thus promotes national growth.

Under the operation of the Articles of Confederation, both Nationalism and Localism by different processes increase each its original determinative strength,

and the danger arises that either alone may force a union of but partial means and incapable of the highest ends. The Federative Principle by its own creative energy chooses the time and method of its complete self-assertion, and in the Federal Convention brings both its factors to the work of "forming the more perfect union." The interest of each is now made to include the highest welfare of the other, and in the Constitution of the United States both Nationalism and Localism find simultaneous, correlated, and adequate expression. Though their methods are in constant warfare, their aim is one, the good of the individual, who in his dual relation is an epitome of the controlling principle.

The growth of the Federative Principle has brought with it a new "refinement in social policy, the greatest to which any age has ever given birth" (Brougham),—the power of the judiciary, under certain conditions, to pronounce upon the constitutionality of the laws, "a security to the justice of the State against its power," (Burke). Now the Federative Principle, as the mediator between the two forces, is preëminently a principle of justice, and this function of the court becomes its servant. The decision is now National, now in favor of the State, and thus through interpretation the Constitution is developed, and the two forces have as free play in the judicial as in the more strictly political action.

There are seven periods in the action of this principle since it first found free scope by the adoption of the Constitution: (1) 1789 to 1801, the period of self-assertion of the national idea and of reaction. (2) 1801 to 1817, the period when parties show themselves subordinate to the Federative Principle. (3) 1817 to 1829, "the era of good feeling," a transition period in which political adjustments of Nationalism and Localism are tentative rather than decisive. Constitutional development during this period is mainly found in the decisions of the Supreme Court, which view the Constitution as a law of laws emanating directly from the people, not as a compact. (4) 1829 to 1841, the new generation. Through the extension of suffrage and answering to the demands of both Nationalism and Localism comes the power of the masses. (5) 1841 to 1849. The first exercise of this power with a definite purpose is to adjust the new economic and industrial forces to the political forces, and, by acquiring Texas and the Pacific coast, to extend the republic to the borders of the continent. (6) 1849 to 1861. In the sixth period culminated a growth of Sectionalism, opposed to the guiding principle of the Constitution and a hindrance to the free activities of its two elements. Slavery up to 1820 connects itself with the State element; from that time its tendency is to become National. The Kansas-Nebraska bill and the Dred Scott decision nationalize slavery; but slavery could not be true to either idea exclusively, for it was from the first a sectional element unknown to the Federative Principle. (7) 1861 to 1884. The assertion of the right of a State to secede from the Union was an attempt to wrest Localism from its true purpose and from its historical and constitutional relations. To restore in all the land its proper sway as well as that of Nationalism the sectional rebellion was fought down. In this work national powers were pushed to an extreme not warranted by the Constitution (decisions of the Supreme Court on Civil Rights Act, Election Acts of 1870, and "Force Bill"). The recent Legal-Tender decision confirms Nationalism in its use of large powers. "It clothes Congress with imperial power" (Secretary Mc-

Culloch). But in the Fourteenth and Fifteenth Amendments there is "no purpose to destroy the main features of the general system" (decision in Slaughter-house cases).

A complete harmony of the two elements of the Federative Principle can never be realized; but the tendency is ever toward harmony, thus placing before our hopes an ideal state. In constructing his ideal republic, Plato rejects discordant powers and forces which would bring false harmonies, and leaves but two essential elements—"these two harmonies I ask you to leave; the strain of necessity and the strain of freedom, the strain of courage and the strain of temperance"—in our state, national will and local self-rule—the one Federative Principle.

After the conclusion of Dr. Scott's paper, the American Historical Association adjourned *sine die*.

RESOLUTIONS OF THE EXECUTIVE COUNCIL.

A meeting of the Executive Council was held during the evening of the last day, September 10th, of the first annual convention of the American Historical Association, to determine the future policy of the new society. It was resolved:

1. That the time and place of the next meeting be decided by a committee of three members of the Executive Council, said committee to consist of the President, A. D. White; the First Vice-President, Justin Winsor; and the Secretary, H. B. Adams.

2. That the Secretary be instructed to prepare and publish an official report of the organization and proceedings at Saratoga, with abstracts of all papers read.

3. That such papers of the Association as may be accepted for the purpose be published in monographic, serial form, with a view to collecting these publications in a series of volumes.

4. That papers which are to be offered for reading to the Association, at any of its meetings, be first sent, at least in abstract, to the Secretary, and that such papers or abstracts be by him referred to a special committee of one or more for examination.

5. That nominations for election be referred by the Secretary to the Executive Council.

6. That, in the opinion of the Council, there is nothing in the Constitution of the American Historical Association to prevent the admission of women into the Association upon the same qualifications as those required of men.

FULL LIST OF MEMBERS.

The following alphabetical list represents the present membership of the American Historical Association, including the original members, who were enrolled at its organization, September 10, 1884, and all persons elected by the Council since that date, who have either sent letters of acceptance to the Secretary, or who have paid their fees to the Treasurer:

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ON

STUDIES

IN

GENERAL HISTORY

AND THE

HISTORY OF CIVILIZATION

PAPERS

OF THE

AMERICAN HISTORICAL ASSOCIATION

VOL. I. NO. 2

ON

STUDIES IN GENERAL HISTORY AND THE HISTORY OF CIVILIZATION

A PAPER READ BEFORE THE AMERICAN HISTORICAL ASSOCIATION AT ITS FIRST PUBLIC MEETING, SARATOGA, SEPTEMBER 9, 1884

BY ANDREW D. WHITE
President of the Association

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ON STUDIES IN GENERAL HISTORY AND THE HISTORY OF CIVILIZATION.

At the founding of an association for the advancement of historical studies in the United States, it is natural that we look over the field to see in what directions and through what channels the activity of American historical scholars can be best directed.

In every branch of learning there are some fields into which all scholars in all nations may enter upon equal terms and with equal chances of success; but there are also special fields in which each national group of scholars works at an advantage, and in which scholars in other nations must, as a rule, give the maximum of labor to the minimum of result; and this is by no means least true in the study of history.

It is evident, for example, that the scholars of each nation have special advantages as regards investigation into the history of their own country: having closer access to its documents and finer appreciation of its modes of thought, they bring themselves more easily into the historical current flowing through their nation than a scholar from outside generally can. There are, indeed, exceptions to this rule. Such men as Ranke, Buckle, von Sybel, Sir James Stephen, Parkman, Baird, and Charles Kendall Adams, writing upon the history of France; Guizot, Pauli, and Gneist, upon the general and constitutional history of England; Motley, upon the history of Holland; Prescott, Ticknor, and Dunham, upon the history of Spain; Robertson, Bryce, Carlyle, and Herbert Tuttle, upon the history of Germany; Haxthausen

and Wallace, upon the history of Russia; De Tocqueville, Laboulaye, and von Holst, upon the history of the United States, show that the general rule has many and striking exceptions, so many exceptions, indeed, as to indicate the existence of a subordinate rule which, simply stated, is that an individual standing outside of the country may be so disengaged and disentangled as to take a clearer view of questions in which religious or patriotic prejudices are involved than most scholars within the country are likely to do. Still, the large rule is unquestionably that the main work in the development of historical knowledge concerning any country must be done by the scholars of that country.

But besides these special fields there are general fields. These have to do with the evolution of man and society in human events through large reaches of time and space,—with a philosophical synthesis of human affairs, or what may be called the "summing up" of history.

These fields are open to thoughtful men of all countries alike; they can be studied with fairly equal chances of success by men in all parts of the world where human thought is not under some curb, and where the love of truth as truth and faith in truth as truth predominate over allegiance to any system, governmental, ecclesiastical, philosophical, or scientific.

While acknowledging the great value of special investigations and contributions to historical knowledge in individual nations, it is not too much to say that the highest effort and the noblest result toward which these special historical investigations lead is the philosophical synthesis of all special results in a large, truth-loving, justice-loving spirit.

Bearing on this point, Buckle, in a passage well worthy of meditation, has placed *observation* at the foot of the ladder, *discovery* next above it, and *philosophical method* at the summit. He has shown that without a true philosophical synthesis special investigations and discoveries often lead us far from any valuable fruits, and that such special investigations may be worse than no investigations at all.[1]

[1] See "History of Civilization in England," English edition, vol. II., p. 387.

To these general considerations as to fields may be added something as to motives of study. The scholar may indeed find his motive for any special study in curiosity, or pride, or the desire to strengthen himself in his profession, or to exalt the fame of his neighborhood or country. Out of such motives indeed good things may grow, and there may come to these growths a beautiful bloom and fruitage; but even the best of these must be special and partial. The great, deep ground out of which large historical studies may grow is the ethical ground,—the simple ethical necessity for the perfecting, first, of man as man, and, secondly, of man as a member of society; or, in other words, the necessity for the development of humanity on the one hand and society on the other. Hence it would appear that, precious as special investigations may be, most precious of all is that synthesis made by enlightened men looking over large fields, in the light of the best results of special historical research, to show us through what cycles of birth, growth, and decay various nations have passed; what laws of development may be fairly considered as ascertained, and under these what laws of religious, moral, intellectual, social, and political health or disease; what developments have been good, aiding in the evolution of that which is best in man and in society; what developments have been evil, tending to the retrogression of man and society; how various nations have stumbled and fallen into fearful errors, and by what processes they have been brought out of those errors; how much the mass of men as a whole, acting upon each other in accordance with the general laws of development in animate nature, have tended to perfect man and society; and how much certain individual minds, which have risen either as the result of thought in their time, or in spite of it—in defiance of any law which we can formulate—have contributed toward this evolution. Here as to results we have a verification of that pithy line of Publius Syrus, *Discipulus est prioris posterior dies.*

This study of history, either as a whole or in large

parts, is of vast value both as supplying the method and the test of special studies on the one hand, and of meeting the highest necessities of man on the other. We may indeed consider it as the trunk of which special histories and biographies are the living branches, giving to them and receiving from them growth and symmetry, drawing life from them, sending life into them.

That such a connection between general and special investigation, between critical analysis of phenomena on the one hand and synthesis of results on the other, is not a theory but a pregnant fact, can be easily seen by a glance over the historical work going on in our own time.

Take first France. The large treatment in Bossuet's Universal History, in Voltaire's *Essai sur les Mœurs*, and in the essays of Condorcet and Turgot, was the cause and, to some extent, the result of a remarkable growth of special histories in the last century. The great philosophical treatise of Guizot upon the history of civilization in Europe, the monumental work of Professor Laurent, of Ghent, upon the history of humanity traced along the lines of international law, and the works of Daunou, Roux-Ferrand, Michelet, and Henri Martin, have been causes and results of a great new growth of special historical investigations in this century. There is no time here to dwell upon individuals, but I may at least mention the works of Thierry, Mignet, Quinet, and Lanfrey, as examples of precious special histories which would never have been written save in the light of these general philosophical histories. If it be said that Thiers is an exception to the rule, I answer that his career is but a proof of it, and that the reason why he has been the most pernicious special pleader among French historians and the greatest architect of ruin among modern French statesmen, may be found in his distinct denial of any philosophical basis of history whatever.[1]

Take next England. We see such masterpieces of general historical work as those of Gibbon and Robertson in

[1] See Thiers' "Consulat et l'Empire," vol. XII., Preface.

the last century, and Grote, Buckle, Whewell, and Lecky in this, acting powerfully both as causes and results of special histories.

Take our own country. The works of Bancroft and Hildreth, the History of International Law by Henry Wheaton, the fragmentary lectures of President Dew, of William and Mary College, the introductory chapters of Prescott's Ferdinand and Isabella and Motley's Dutch Republic, the History of the Intellectual Development of Europe by Draper—warped though it is by his view of the analogy between national and individual development,—and such recent works as those of Lea, Charles Kendall Adams, McMaster, Coit Tyler, Lodge, Parkman, and others, with the work now going on at Cambridge, the State Universities of Michigan and Wisconsin, Johns Hopkins and Cornell Universities, show this same law in full force.

And if we go to fields more remote, we find in Italy the great philosophical generalizations of Vico working down through the writings of Sismondi, Colletta, Villari, Cantù, Bonghi, Settembrini, and a host of others. Even in Spain we find that Balmés, thoughtful as he is, having simply the thought and depth of a special pleader, stimulates men with the same defects in special fields.

But greatest proof of all that these two growths of historical thought are vitally connected, is to be found in even the most rapid survey of the work going on in Germany. Of the vast number of special growths I have no time to present the slightest sketch ; their thoroughness and extent are exemplified in the *Monumenta Germaniæ* as carried on by Waitz, Wattenbach, and their compeers. But the work in the study of general world-history and the history of civilization has developed both as a cause and result of this special work. Of broad and philosophical treatises we have such world-histories, of different merits, as those of Leo, Schlosser, Weber, and Ranke ; and, covering parts of the great field but in the same general spirit, such works as those of Ranke, Mommsen, Ernst Curtius, Droysen, Giesebrecht, Gregorovius, and a multitude of others ; and in his-

tories of civilization such as those of Wachsmuth, DuBois Reymond, Biedermann, Carriere, Henne-Am Rhyn, Kolb, Hellwald, Honegger, Grün, Lazarus, Prutz, and others,—a list extending through the whole gamut of capacity. I adduce these facts, and especially this luxuriance of growth in German general historical studies, simply to show that such general growths go with special historical study, and that, however much we do and ought to do in this country as to special investigation, an indication of healthful growth will be found in general and synthetical work even though some of it be inadequate.

And here allow me to call your attention to the use of the term "investigation." There appears frequently an idea that the word can be justly applied only to search into minute material facts and documents; but is it not just as true that investigation can be made into the relations and laws of facts? So, too, regarding a phrase we constantly hear, "the advancement of knowledge." But is knowledge advanced alone by the study of minute facts and occurrences? May it not also be advanced by a study of relations and methods and of laws governing such facts and occurrences? Investigation is as truly a means to the advancement of knowledge in the hands of the philosophic historian dealing with general history, as in those of the most minute annalist dealing with some forgotten piece of diplomacy or strategy. Did it not require as much original investigation, and was not the field of knowledge as much increased, when Guizot gave us his profound and fruitful generalizations as to the laws governing and consequences flowing from national development in civilization, under the influence of one or many elements, as when Gachard discovered the facts regarding the cloister life of Charles V., or when Mr. Poole showed the connection of Manasseh Cutler with the Northwestern territorial ordinance? The two—general and special investigation—must go together. So it was in Guizot's case; so it should be in all cases.

But let us now look somewhat more closely into this

matter of the investigation of historical facts, especially as to the ends sought and the qualities required. Doubtless the end sought is exact truth, and the first quality required, veracity. But then comes the question: what truth, and, veracity on what lines? Take a case. Two men investigate the formation of one of our State constitutions. One knows little of the constitutional development of our other States, or of the nation, or of foreign countries. He gives us a plain, dry statement of the facts which he sees, which, of course, are mainly surface facts. He is particular to give us the dates of sessions, the names of chairmen, the heads of committees, the makers and matter of speeches. The other, of equal veracity, knows much of the development of constitutional history in our own and other nations. He, too, gives us what he sees; and therefore he makes the fundamental facts shine through the surface annals. We have simply the difference here between the history of the birth of an American commonwealth, by a keen, rural lawyer—as keen, if you please, as Thiers—on the one hand, and on the other by a Story, a Cooley, or a Stubbs. Take another case. Two men investigate the history of popular government in one of our great cities—New York, perhaps. One is a careful, painstaking annalist, and nothing more. He masters the surface facts so far as they are given by chronicles of various sorts, from Stuyvesant and Governor Dongan's charter to the overthrow of Tweed and to the supremacy of Kelly. The other is just as careful and truthful, but something more. He has studied and meditated upon other cities; he has perhaps done what Ruskin insists that every true scholar ought to do—has studied the history of the five great cities of the world; has meditated upon the growth of the commercial spirit in the Italian city republics, in the Hanseatic League, and in the great English seaports; upon the growth of city factions from the days of Claudius and Milo in Rome, through the Blues and Greens in Constantinople, the Bianchi and Neri in Florence, the Remonstrants and Counter-Remonstrants in the cities of Holland, and the New York "Halls";

upon outbursts of civic public spirit like those which produced the Parthenon at Athens, the Duomo at Florence, and the town-halls of the Netherlands; upon the good and evil tendencies of accumulated civic wealth from Crassus, Jacques Cœur, and the Medici, to Peabody, and Cooper, and Vanderbilt; upon the tendencies of a civic proletary class as typified in such examples as the Marian prescriptions in Rome, the dealings of the mobs in mediæval Laon and Liège with their bishops, the Terror and Commune of Paris, the Know-Nothing riots of Philadelphia and the Draft riots of New York. Who does not see that the latter scholar will reveal masses of important facts and relations which the other can never find?

Again, two men set out to investigate the growth of some phase of belief. Both are veracious, but one is simply minute, painstaking, limited by sectarian trammels, with little light from outside history; the other has made broad studies in comparative philology and religion. Which is likely to give us something that, even considered purely as an investigation, is of real value?

But it is not necessary to suppose cases. Every reader of history can recall real cases of "investigation" "extending the boundaries of knowledge," showing the vast difference between the annalist and the historian. Take one of the most recent. Professor Ihne, in his admirable History of Rome, has made a new investigation of the story of Publius Ælbutius and the panic persecution of the Bacchanalian fanatics. Who that reads his account does not see that the most important element in his investigation comes from his general knowledge, and that he throws a powerful light into the depths of the story from his knowledge of the inmost spirit of the panic persecutions of the early Christians, of the Jews in the Middle Ages, and of the Roman Catholics in England under Charles II.?[1]

And now allow me to call attention to some subordinate indications as to method, given by general history to special history. Greatly as I admire the main drift of Mr.

[1] See Ihne's "History of Rome," chap. XIII.

Herbert Spencer's argument upon historical studies in his treatise on Education, some of his statements seem to me to require limitation. He seems at times to confuse the study of history with the study of statistics, and thus to demand scientific proof when the nature of the material can only give moral proof.[1] The analogy between the study of history and of travel has justly struck many minds, and throws some side light upon Mr. Spencer's confusion. Let us observe this analogy in making a case. Two young Americans go to England for a year. One devotes himself, in strict accordance with Mr. Spencer's theory, to "descriptive sociology," which, under the rules laid down by Mr. Spencer, results in the statistical tabulation of a vast multitude of facts; the other occupies himself in getting at the thought of the time, dominant or militant, by reading the best books, by talking with the best men in every field, by noting ends and methods in work of all sorts, by studying, comparatively, various ways of solving political and social problems, by observing society in all its branches, even by listening to the current chatter and prattle, in the various social strata. Both may come back useful men; but I think that none of us will deny that, as a man, the second —the historian—will be far better developed, and as a thinker, writer, or man of affairs far better equipped than the first—the statistician. Mr. Spencer has much to say regarding worthless sources and worthless facts. The truth is, a fact which appears very petty may be of vast value if it be pregnant, and a fact which appears very important is worthless if it be barren. Louis XIV. receiving Condé on the great staircase of Versailles was an immense fact at the time; to us, in the light of general history, it is worth little or nothing. Louis XVI. calling for bread and cheese when arrested at Varennes, and declaring it the best bread and cheese he ever ate, furnishes a fact apparently worthless, but really of significance, for it reveals that easy-going helplessness which was so important a factor in the wreck of the old French monarchy,—indeed, that very spirit of which

[1] See Herbert Spencer on "Education," chap. I.

Thomas Jefferson so amusingly generalized the causes and results in his letter to Governor Langdon.

The fact that Rufus Choate filled this republic with his mellifluous eloquence as a special pleader and was sent to the Senate of the United States, great as it then appeared, is now, as tested by the laws of general history, of no value. On the other hand, the fact that William Lloyd Garrison was editing a petty paper in Boston, unworthy of notice as it seemed then, is now found to be one of the great facts in American history—indeed, a most instructive fact in general history.

This test applied by general history to special throws into its true light much of the cant now current regarding the worthlessness of information as to battles, sieges, and treaties, and the supreme worth of facts regarding the popular life.

Mr. Spencer speaks contemptuously of historical attention to battles; yet battles may be important, and a little battle may be of vast value, and a great battle of none. The little battle of Saratoga is of great importance as a turning point in the history of mankind; the great battle of Austerlitz is of comparatively little importance, because it shows merely the result of a clash between two temporary developments in European politics. Mr. Spencer makes little of the reading of memoirs; yet the little memoir of the Baroness Riedesel throws a flood of light upon the spirit in which this little battle of Saratoga was fought and in which this American colonial empire was lost by British mercenaries and won by American yoemanry; indeed, it throws a light into the depths of philosophic history, for it shows the force of a love of freedom against the service of despotism.

Mr. Spencer tells us that "familiarity with court intrigues, plots, usurpations, and the like, and with all the personalities accompanying them, aids very little in elucidating the causes of national progress." This is in the main just, yet somewhat too sweeping. Few subjects in modern history are more fruitful in valuable thought than the rise, glory, and

decline of the absolute monarchy in France from Richelieu to Necker. Every historical scholar, no matter whether he agree with Buckle's theory or not, must acknowledge his masterly use of this subject in conveying some of the most important moral and political lessons to our present world. But how much less would have been Buckle's knowledge of the inner workings of that time had there not been open to him and to us the memoirs and diaries of St. Simon, Dangeau, Barbier, and the like. It is very doubtful whether the most elaborate collection of statistics would compensate for their loss.

Mr. Spencer also pours contempt, and with much justice, over details of battles. And yet, while sympathizing largely with his statement in this respect, a careful historian must confess that there are details of battles which the thoughtful student may well keep in mind. For example, when at the beginning of our recent civil war our Northern troops yielded at Bull Run and elsewhere to the first onset of the enemy, it was of some value to remember, in estimating the significance of such a yielding, that in the first battles of the French Revolution with Europe the troops afterward so successful broke more than once in this same manner. There are those of us who can remember how precious a knowledge of this little historical fact was to us then, and one, to my personal knowledge, used it before large audiences to keep up the courage of his fellow-citizens in that time of peril.

Mr. Spencer asks: "Suppose that you diligently read accounts of all the battles that history mentions, how much more judicious would your vote be at the next election?" Thinking Americans of the age which most of us have reached bear an answer to this question stamped vividly in our memories. In the fearful crisis of our Civil War there were certain histories, of which battles formed a large part, that were precious. I remember at that time when at one of our greatest universities bodies of students came to my lecture-room asking: "What shall we read?" my answer was: "Read the history of Rome just after the battle

of Cannæ; read Motley's history of the Dutch Republic, and especially of the siege of Leyden; read Macaulay's account of the siege of Londonderry; read Provost Stillé's pamphlet, 'How a Great People Carried on a Long War.'" All of us know that at many elections, perhaps at most of them, the question is not one of knowledge but of conduct; that is, not "What ought I to do?" but "Have I the courage to do what I ought?" Sometimes historical facts which cannot be shaped into sociological tables aid us to answer either or both of these questions. The fact above referred to—that another leading nation, though its troops broke up in panic two or three times at first, carried a vast war to ultimate victory—was used at the beginning of our Civil War for the very purpose of enlightening citizens as to their duty in "voting at the next election,"—used to show them that they should not vote for candidates who represented public discouragement and the tendency to make a compromise involving either disunion or the retention of slavery, forever, in the Constitution of the United States.

So, too, I recall another historical fact which was used with effect at that time to keep up the courage of our people as to voting men and means for the war, and voting for candidates determined to resist disunion and the perpetuation of slavery. It was a fact which would probably never occur to any one as fitting into a sociological table, and yet it was to the American people an important fact. It was simply that at the beginning of the great English Civil War, in the middle of the seventeenth century, the first race of generals on the popular side—men like Manchester and Essex—failed because they could not thoroughly appreciate the questions at issue, and that success came only when men of sterner purpose were put in command. This historical fact, both in its development and results, was perfectly paralleled in our own history.

So, too, as to treaties. The treaty of Paris after the Crimean war has but a temporary interest; the treaty of Westphalia has been active in the development of Europe, political, intellectual, and moral, down to this hour.

So, too, as to facts apparently dried up and withered. A pamphlet by a forgotten sophist like Royer, and a speech by a contemptible demagogue like Gouy, at the beginning of the French Revolution, giving reasons for unlimited issues of paper-money then, are facts which would appear in no table of descriptive sociology ; and yet, when this republic had recently to deal with the most momentous question since the Civil War,—the question of wild finance and currency inflation,—the arguments in Royer's pamphlet and Gouy's speech, and others like them, which were once used to plunge France into the abyss of bankruptcy and ruin by unlimited issues of paper-money, were exhibited in our own country with decided effect, before committees at Washington, before meetings of business men in New York, and in campaign pamphlets. They were certainly facts of vast importance with reference to "a vote at the next election," —a vote which was to decide whether this republic should be, by similar arguments and policy, plunged into misery and disgrace.

So, too, as to facts regarding individual action: Aristotle in the apothecary shop, Plato in the grove, Erigena and Thomas Aquinas in the schools, Copernicus in his cell, Newton in the orchard, Cardinal D'Ailly writing his *Imago Mundi*, Grotius writing his *De Jure Belli ac Pacis*, Comenius writing his little *Orbis Pictus*, Volta in his university, Watt in his work-room, Descartes turning from natural science to philosophy, Paolo Sarpi advising the Venetian Republic how to meet an interdict, and writing his History of the Council of Trent, Thomasius publishing his treatise against witchcraft in the name of a student, Beccaria writing his little book on Crimes and Punishments, Adam Smith writing his Wealth of Nations, Kant writing his Critiques of the Pure and Practical Reason, Beaumarchais writing his *Mariage de Figaro*, Harriet Beecher Stowe writing her Uncle Tom's Cabin, Darwin on the Beagle, Cavour meeting Napoleon III. at Plombières, Bismarck meeting Frederick William IV. at Venice, Lincoln taking the stump in Illinois,—what facts are these!

The simple truth is that there are facts and facts. In the beginning of this century, Metternich prompting the policy of Europe was supposed to be great; Stein in his bureau was thought of little account. In our own time, Napoleon III. on the throne was apparently a great fact; but how much greater a fact was Pasteur in his laboratory! In England foolish Lord John Russell, reading homilies to the cabinets of Europe and nearly blundering into a great war with the United States, was called a statesman and seemed a controlling personage; but how small his real influence on England or the world at large compared with that of the rather forlorn Prince Consort, who, despite his birth and environment, and the limitations imposed by a sneering court and jealous people, labored so successfully for the development of art and science throughout the world, and used his influence against the war which the folly of Lord John Russell did so much to bring on.

The simple rule and test which general history and the history of civilization give to special investigation is that if close knowledge of a battle, or an intrigue, or a man is important to our knowledge of the great lines of historical evolution, then these facts are important; if not, they are not important.

To the statement, then, that history has occupied itself too much with kings and courts and conquerors, and that it should "occupy itself with the people," a true historical synthesis gives answer that history must occupy itself with men and events which signify something. The men may be saints or miscreants, popes or monks, kings or peasants, conquerors or conspirators, builders of cathedrals or weavers of verse, railway kings or day laborers, publicists or satirists, philanthropists or demagogues, statesmen or mob orators, philosophers or phrase mongers. The event may be a poem or a constitution, a battle or a debate, a treaty or a drama, a picture or a railway, a voyage or a book, a law or an invention, the rise of a nation or the fall of a clique.

Meeting our ethical necessity for historical knowledge with statistics and tabulated sociology entirely or mainly, is

like meeting our want of food by the perpetual administration of concentrated essence of beef.

Again, is it possible to reduce necessary historical knowledge to such concentrated and tabulated form? There are statistics and statistics; some increase our perception of truth, some decrease it. As an example of both these facts, take a statement made in Montesquieu's Greatness and Decline of the Romans, with Mr. Baker's excellent notes.[1] Montesquieu shows statistically and very effectively that in the early days of Rome the ratio of soldiers to population was as one to eight, whereas in Europe in Montesquieu's time it was about one to a hundred; and that this latter is the highest rate which can safely be maintained in a modern state. Mr. Baker corroborates this in a very striking manner, by showing that the number of persons serving in the armies and navies of the great modern European states remains about one to one hundred. Now, so far, these statistics increase our perception of truth. They show simply but conclusively how much more strongly the warlike feeling was cherished in Rome, when, instead of one soldier or sailor to a hundred, as in the modern States, there was one to eight.

But, on the other hand, take another statistical statement, which is, that under the Roman Empire, at the time of its greatest expansion, there was only one soldier and sailor to 266 of the population, a ratio but little more than one third as great as that in the seven great military states of Europe to-day.[2] This statistical statement, apart from other knowledge, would inevitably lead to the conclusion that the Roman Empire had ceased to wage war; that, as compared to the great modern states of Europe, it thought little of self-defence, and needed to think little of it; whereas the fact is that Rome at that very time was perpetually at war, that war was its greatest concern,—in fact, that its statesmen thought of little else on a large scale besides war.

[1] See Montesquieu's "Grandeur and Decadence of the Romans," chaps. III. and XV., with Baker's notes.

[2] See Montesquieu, as above, chap. XV.

Again, there are material statistics and moral statistics, and to each must be assigned a proper place. The corruption and decline of Rome is one of the most important and suggestive things in human annals. This corruption and decline is as real as the existence of Rome itself. But how are we to understand it? Material statistics as to the amount of territory conquered, wealth swept into Rome after the Carthaginian and Eastern wars, agricultural populations pauperized, slaves substituted for yeomen, *latifundia* substituted for peasant farms, and the like, if we could obtain them, might be of use. But there are moral statistics of no less value. A poem of Lucretius, showing that thinking men had outlived the old faith, and that a great chasm had been opened between reason and religious institutions; Cicero's vacillating treatment of torture in procedure; a dialogue of Lucian, showing that the old religion had utterly broken down; a fling in Juvenal, at the hysterical superstitions arising, especially among women; a sentence in Tacitus approving the execution of four hundred slaves of Pedanius Secundus because one of them, unknown to the others, had murdered their master; the picture of a gladiatorial combat by Gérôme, and Alma Tadema's picture of the prætorians dragging Claudius to the throne,—in each of these facts is included a whole column of moral statistics, which enable us to see far into the spirit of the time and the causes of that imperial decline, as columns of material statistics might not do.

Take another field—the moral deterioration of France preparatory to the Revolution. This was a fact of vast moment to Europe. Doubtless statements could be tabulated to show this deterioration, but what statistics could throw so much light into it as the simple fact that the sainted Fénelon was succeeded in the archbishopric of Cambray by the infamous Cardinal Dubois; that while the government had disgraced Fénelon, it loaded Dubois with honors; and that while the clergy had without a murmur allowed Fénelon to be crushed, they invited Dubois to preside over their National Assembly.

Take a very different subject. The wild partisan madness of England toward France, which pushed on the war against the first French Republic, teaches a philosophical and practical lesson to every modern nation. What statement can be tabulated so as to show it? Yet a single caricature of Gillray, glorifying that infamous assassination by the Austrians of Bonnier and Roberjot, the French envoys to the Congress of Rastadt, with the punning inscription exulting in that worst breach of international law in modern times, tells the whole story.

Take a still more recent field. The material statistics as to the diminution in the height of soldiers in the French army during the later wars of Napoleon are of great value as showing not only the fearful state of exhaustion to which the empire was reduced, but the price which a nation has to pay for "glory." Look, now, at a moral statistic showing the same thing. One of the memoir writers[1] tells us that when Napoleon, after throwing away his army of over five hundred thousand men in the Moscow campaign, had hurried back to France and had entered the Tuileries almost alone, he rubbed his hands before the fire and simply said: "Decidedly it is more comfortable here than in Moscow," with no further mention of the loss that France had sustained, and evidently with no sympathy for the millions whom he had bereaved. Here is a moral statistic to the same effect as the material statistic just cited, and of equal value in showing the spirit in which Napoleonism wrought, and, indeed, from the point of view of general history, the spirit which military despotism necessarily engenders.

Again, take the history now going on among ourselves. The future historian of the United States will, no doubt, give especial attention to the reunion of the Northern and Southern States as a homogeneous nation after the Civil War. This process is going on at this moment. What material facts that can be tabulated into a descriptive sociology throw any light upon it? I can see none. If you say the statistics of the votes in the Electoral Colleges cast

[1] Bourrienne, I think.

at the last presidential election, my answer is that these will certainly mislead the future historian if he is not very careful, for they would seem to show an absolute and complete break between North and South—a separation greater than before the war. But are there not moral statistics of far more real value in this case showing the very opposite of this? I think so. Take the simple fact that Judge Finch's poem, "The Blue and the Gray," is recited on Decoration Day, North and South; take the fact that Mr. Atkinson delivered his address at the Georgia Exposition and found most respectful audience for his very plain statements of Southern shortcomings which before the war would very likely have cost him his life; take the hospitable reception of Northern military companies in the South bearing the flag against which the Southern men risked their lives with a bravery very notable in human annals;—these are types of a multitude of facts which can be arranged in no table of material statistics, but which are moral indications of the greatest value.

And now as to certain limitations in the methods of investigation imposed upon us by circumstances peculiar to ourselves. I remember several years ago hearing a gentleman, temporarily eminent in politics (one of Carlyle's *hommes alors célèbres*) in a speech before the authorities of an American university, declare that all history must be rewritten from an American point of view. This assertion, at the time, seemed to savor of that vagueness and largeness often noted in the utterances of the American politician upon his travels, which, in our vernacular, is happily named "tall talk"; but as the statement has recurred to my mind at various periods since, it has seemed to me that our political friend uttered more wisely than he knew. For is it not true that we, in this republic, called upon to help build up a new civilization, with a political and social history developing before us of which the consequences for good or evil are to rank with those which have flowed from the life of Rome and the British Empire,—is it not true that, for us, the perspective of a vast deal of history is

changed; that the history which, for the use of various European populations, has been written with minute attention to details, must be written for us in a larger and more philosophical way?

And is it not true that the history so rapidly developing here is throwing back a new light upon much history already developed? What legislator cannot see that the history of our American municipalities throws light upon the republics of the Middle Ages, and derives light from them? What statesman cannot understand far better the problem of the British government in Ireland in the light of our own problem in the city of New York? What classical scholar cannot better understand Cleon the leather-seller, as we laugh at the gyrations of a certain American politician now "starring it in the provinces"? What publicist cannot weigh more justly the immediate pre-revolutionary period in France as he notes a certain thin, loose humanitarianism of our day which is making our land the paradise of murderers? What historical student cannot more correctly estimate the value of a certain happy-go-lucky optimism which sees nothing possible but good in the future, when he recalls the complacent public opinion, voiced by the Italian historian just before 1789, that henceforth peace was to reign in Europe, since great wars had become an impossibility?[1] What student of social science cannot better estimate the most fearful anti-social evil among us by noting the sterility of marriage in the decline of Rome and in the eclipse of France?

In this sense I think that the assertion referred to as to the rewriting of history from the American point of view contains a great truth; and it is this modified view of the evolution of human affairs, of the development of man as man, and of man in society, that opens a great field for American philosophic historians, whether they shall seek to round the whole circle of human experience, or simply to present some arc of it.

The want of such work can be clearly seen on all sides.

[1] See Cantù, "Histoire des Italiens."

Not one of us reads the current discussions of public affairs in Congress, in the State Legislatures, or in the newspapers, who does not see that strong and keen as many of these are, a vast deal of valuable light is shut out by ignorance of turning-points in the history of human civilization thus far. Never was this want of broad historical views in leaders of American opinion more keenly felt than now. Think of the blindness to one of the greatest things which gives renown to nations, involved in the duty levied by Congress upon works of art. Think, too, of the blindness to one of the main agencies in the destruction of every great republic thus far, shown in the neglect to pass a constitutional amendment which shall free us from the danger of *coups d'état* at the counting of the electoral vote. Think of the cool disregard of the plainest teachings of general history involved in legislative carelessness or doctrinaire opposition to measures remedying illiteracy in our Southern States. Never was this want of broad historical views more evident in our legislation than now. In the early history of this republic we constantly find that such men as John Adams and Thomas Jefferson, to say nothing of the lesser lights, drew very largely and effectively from their studies of human history. In the transition period such men as Calhoun, John Quincy Adams, Everett, and Webster drew a large part of their strength from this source. And in the great period through which we have recently passed the two statesman who wrought most powerfully to shape vague hopes into great events—William Henry Seward and Charles Sumner—were the two of all American statesmen in their time who drew inspiration and strength from a knowledge of the general history of mankind. Nothing but this could have kept up Seward's faith or Sumner's purpose. The absence of this sort of light among our public men at present arises doubtless from the necessities of our material development since the Civil War, and the demand for exact arithmetical demonstration in finance rather than moral demonstration in broad questions of public policy; but as we approach the normal state of things

more and more, the need of such general studies must grow stronger and stronger.

As regards the work of our American universities and colleges in the historical field, we must allow that it is wofully defective; but there are signs, especially among those institutions which are developing out of the mass of colleges into universities, of a better time coming. They must indeed yield to the current sweeping through the age. This is an epoch of historical studies. It is a matter of fact, simple and easily verified, that whereas in the last century state problems and world problems were as a rule solved by philosophy, and even historians such as Voltaire and Gibbon and Robertson were rather considered as philosophers than as historians, in this century such problems are studied most frequently in the light of history.

Still another encouraging fact is that advanced studies of every sort are more and more thrown into the historic form; the growth of the historical school in political economy is but one of many examples of this. More and more it is felt that "the proper study of mankind is man"; more and more clear becomes the idea enforced by Draper, that the greatest problems of humanity must be approached not so much by the study of the individual man as by the study of man in general and historically.

To this tendency the great universities of the old world have already conformed, and to this the institutions for advanced instruction in our own country must conform before they can take any proper rank in the higher education and be worthy to be called even the beginnings of universities.

It is largely in these institutions of learning that this work of historical study which I especially advocate—this union of close scientific analysis with a large philosophic synthesis—must begin. Unquestionably the number of professors devoted to historical investigation in the German universities is the great cause of the fact that Germany has surpassed other modern nations not only in special researches, but in general historical investigations. Important researches have indeed been made outside her univer-

sities, but the great majority of them have certainly been made by university men; and this indicates the lines on which historical studies are to be best developed in our own country. Every professor of history in a university should endeavor to present some special field with thoroughness; to extend, deepen, or quicken special knowledge in that field; to lead his students to investigations in it. Doubtless of all such fields that which, as a rule, will yield the most fruit to special and original investigation by American students will be found in English and American political, social, and constitutional history. But while the professor in an American university makes special studies, he ought to be laboring toward something like a conspectus of human history,—if not of all human history, at least of some great part of it. So shall he prevent his generalizations from becoming vague, and his investigations from becoming trivial.

During a recent residence in Germany I more than once found the ablest investigators, men of world-wide rank, lamenting the relative want of this large philosophical work. Said the Rector of one of the foremost universities to me: "It saddens me to see so many of my best young men confined entirely to mere specialties and niceties. The result of all this is an excessive specialization of study which, if carried much further, will render a university impossible."

To lead American students in our universities and colleges prematurely and mainly into special and original investigations is simply to fasten upon them the character of petty annalists. With such special work should go, *pari passu*, thoughtful study of great connected events.

Among many examples proving this necessity, in the university professor, of large general studies in connection with the best special work, we have some especially striking in our own time. Who does not see that Professor Freeman's admirable researches into mediæval history derive perhaps the greater part of their cogency from the very wide range of his studies in time and space? Who does not feel that even when he is investigating the minutest point in what

Milton compared to the "wars of kites and crows," the habit of mind engendered by this general study adds vastly to the value of his special study, enabling him to see what lies under the mere surface history here and to strike the turning-point there? So, too, with Professor Goldwin Smith. Who of us does not feel during his discussion of the simplest point, even of local Canadian history, that we are in the grasp of a man who brings to the subject a broad knowledge which enables him to flood the pettiest local event with light as the simple annalist and mere special investigator could never do? Who that has had the pleasure of hearing such professors as Ernst Curtius at Berlin, or Oncken at Giessen, has not seen that the secret of strength in the German professor is not, as commonly supposed, merely in his minute investigation, but very largely in his illumination of special research by broad general study? Such are special studies when combined with general studies. But who has not seen them when not thus combined?

So have I known a local historian devote himself to abstruse study of such questions in the history of a country town as whether the fire-engine house was originally in the neighborhood of the village school or of the town pump, and whether a petty official recently departed was at an early period of his life in sympathy with the Presbyterians or Methodists.

It is to be hoped then that at the future meetings of an Association such as we now contemplate papers may be frequently presented giving the results not only of good special work in history and biography, work requiring keen critical analysis, but of good work in the larger field requiring a philosophical synthesis. There ought certainly to be a section or sections in American history, general and local, and perhaps in other special fields; but there ought to be also a section or sections devoted to general history, the history of civilization, and the philosophy of history.

Of course such a section will have its dangers. Just as in the section devoted to special history there will be danger

of pettiness and triviality, so in that devoted to general history there will be danger of looseness and vagueness—danger of attempts to approximate Hegel's shadowy results. But these difficulties in both fields the Association must meet as they arise. Certainly a confederation like this—of historical scholars from all parts of the country, stimulating each other to new activity—ought to elicit most valuable work in both fields, and to contribute powerfully to the healthful development on the one hand of man as man, and on the other to the opening up of a better political and social future for the nation at large.

None can feel this more strongly than the little band of historical scholars who, scattered through various parts of the country, far from great libraries and separate from each other, have labored during the last quarter of a century to keep alive in this country the flame of philosophical investigation of history as a means for the greater enlightenment of their country and the better development of mankind.

HISTORY AND MANAGEMENT

OF

LAND GRANTS FOR EDUCATION

IN THE

NORTHWEST TERRITORY

PAPERS

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HISTORY AND MANAGEMENT OF LAND GRANTS FOR EDUCATION IN THE NORTHWEST TERRITORY

(OHIO, INDIANA, ILLINOIS, MICHIGAN, WISCONSIN)

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PREFATORY NOTE.

This paper was prepared when the writer was studying in the School of Political Science of the University of Michigan, and was presented to the Faculty of the Department of Literature, Science, and the Arts of that institution, as a thesis for the degree of Doctor of Philosophy. In collecting material for the paper the writer visited Columbus, Indianapolis, Chicago, Lansing, and Madison, and in no case has information received at second-hand been used where original papers and documents were obtainable. All of the references given in the foot-notes, with a single exception, have been made after a personal examination of the passages referred to, and it is believed that the list of authorities given at the end of the paper embraces every book of importance bearing on the subject.

An abstract of the paper was read by Professor Charles Kendall Adams before the American Historical Association, at its first public meeting, in Saratoga, September 1, 1884.

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PART I.

FEDERAL LEGISLATION.

A.—LEGISLATION AFFECTING THE ENTIRE TERRITORY.

By the treaty of Paris in 1763 the Mississippi River was made the boundary between the British and Spanish possessions in North America. When the United States gained their independence, the same river marked the western limit of their territory. None of the land was public domain. The individual States claimed the entire western country under various and conflicting titles. To the region west of Pennsylvania and north of the Ohio River, Virginia, Connecticut, New York, and Massachusetts asserted their title by virtue of charters, grants, and purchases. Before the war of the Revolution had closed, it was felt by the statesmen of the country that the welfare of the whole people would be promoted if the individual States should cede to Congress this vast unsettled region, to be used as a resource for the payment of the war debt. Congress, in September, 1780, adopted resolutions setting forth the desirability of this step, and invited the States to make the cessions.[1] To remove any hesitation which might arise in giving Congress absolute control over so large a domain, a resolution was adopted a month later, declaring that any territory so ceded should be disposed of for the common benefit of the United States, and should be formed into sovereign republican States, of a given area, on the same footing with the original thirteen.[2]

[1] Document A, 64. (For full titles of documents and books referred to in this paper see the list on page 173.)

[2] *Ibid.*

In response to the invitation, New York, on the first day of March, 1781, relinquished her claims to the western territory. On the second of January in the same year, the Legislature of Virginia submitted to Congress a proposition to cede her western lands on certain conditions. Owing to these conditions the proposal lingered before Congress for many months, awaiting definite action. On the fifth of June, 1783, Colonel Bland, a delegate from Virginia, introduced a motion to accept the cession on the terms offered, and to divide the country into districts of a specified size, each district to become a State as soon as it contained twenty thousand inhabitants. In these districts the Continental soldiers were to receive bounty lands, while Congress was to reserve one tenth of the territory, the income from which was "to be appropriated to the payment of the civil list of the United States, the erecting frontier forts, the founding seminaries of learning, and the surplus (if any) to be appropriated to the building and equipping a navy."[1] This motion was referred to a committee, and never again came up for consideration. It is, however, to be noted as the first proposition made in Congress looking toward an appropriation of public lands for the support of education.

While Congress was theorizing and hesitating over the Virginia cession, a movement was started in New England which, though unsuccessful in its immediate object, rendered great service to the country in hastening the opening of the West. Several months before Colonel Bland's motion was offered, Rufus Putnam and other officers of the New England soldiery had conceived the idea of forming a State, between Lake Erie and the Ohio River, to be settled by army veterans and their families. In April, 1783, Colonel Timothy Pickering outlined a plan for the proposed State, upon the basis of which Putnam drew up a petition to be signed by the officers and submitted to Congress, asking for leave to plant such a colony.[2] In his plan Pickering proposed that, after a certain amount of land had been distributed among the army in payment of services in the war,

[1] *Apud* 1 Bancroft, Appendix, 312. [2] *Apud* 1 Bancroft, Appendix, 314.

"all the surplus lands should be the common property of the State, and disposed of for the common good, as for laying out roads, building bridges, erecting public buildings, establishing schools and academies, defraying the expenses of the government, and other public uses."[1] The petition was forwarded to Congress through General Washington, in a letter to whom, June 16, 1783, urging him to assist in furthering its success, Putnam suggested that the lands should be divided into townships six miles square,[2] with reservations for schools and the ministry.[3] The subject was referred to a committee for consideration, but, though it remained before them many months, it never received favorable action.

Congress was, however, awakened from its lethargy. The energy of the delegates was diverted from talking to acting. In September, 1783, a resolution was passed to accept the Virginia cession with some modification of the terms offered.[4] The Legislature of Virginia assented to the modification, and, on the first day of March, 1784, ceded to "the United States in Congress assembled, for the common benefit of the States," all claim to the territory northwest of the Ohio River.[5] Having thus spent three years in concluding a matter which need not have taken as many months, Congress, without waiting for Massachusetts and Connecticut to give up their claims to portions of the same lands,[6] proceeded to establish its authority over the newly acquired territory.

[1] 1 Pickering, 546.

[2] The first suggestion of townships of this size is found in a report made to Congress in November, 1781.—1 Bancroft, 106.

[3] Walker, 30–36. Washington sent a copy of this letter to Congress with the petition.

[4] Document A, 67.

[5] Poore, 427, 428. By the terms of the deed of cession, enough land was to be reserved from sale by Congress to satisfy bounty warrants promised by Virginia to her soldiers in the late war. The tract subsequently set aside for this purpose was known as the Virginia Military Reservation.

[6] Massachusetts ceded her claims April 19, 1785, and Connecticut, September 13, 1786. The latter retained the ownership of the land between Lake Erie and the forty-first parallel of latitude, and extending westward one hundred and twenty miles from the western boundary of Pennsylvania. This portion of the State of Ohio is known as the Connecticut Western Reserve.

On the same day that saw the Virginia deed of cession delivered to Congress, a plan was reported to that body for the temporary government of the western territory. This plan was the work of Thomas Jefferson. While borrowing some features from the motion offered by Bland in the previous year, it omitted the provision for seminaries of learning. After important amendments, none of which touched upon educational provisions, it was adopted on the twenty-third of April.[1]

Few statesmen of that day valued this territory for the almost unlimited possibilities it afforded for the future greatness of the nation, in the establishment of new states which in wealth and influence and power would soon rival their older sisters. If this thought found place in the minds of any, it was generally subordinated to a far less exalted sentiment. "The western lands were looked upon by all the financiers of this period as an asset to be cashed at once for payment of current expenses of the government and extinguishment of the national debt."[2] This had been the view of Congress in 1780, when it first asked for a cession of the lands, and this view still prevailed.[3]

Some guaranty of protection to settlers had been necessary before they would be willing to purchase lands in what was then the distant western wilderness. Such a guaranty was given by the ordinance for the government of the territory. Other measures were essential to the accomplishment of the main object of Congress,—the sale of the lands. Hitherto settlement in the west had been discouraged and prohibited.[4] Now, however, all through the Atlantic States

[1] 1 Bancroft, 158.

[2] Document A, 196.

[3] A few days after Jefferson's ordinance of government had been adopted, Congress, in urging the remaining States to follow the example of New York and Virginia in giving up their claims to western lands, resolved "that our creditors have a right to expect that funds shall be provided on which they may rely for their indemnification; that Congress still considers vacant territory as an important resource; and that, therefore, the said States be earnestly pressed, by immediate and liberal cessions, to forward these necessary ends and to promote the harmony of the union."—*Ibid.*

[4] *Ibid.*, 63, 196.

men were looking toward this region and waiting for it to be thrown open to purchasers and settlers. Congress saw that the realization of its hopes of financial relief through the disposal of the lands lay in the adoption of liberal terms of sale. Yet they proceeded with the deliberation, or hesitation, which characterized all their doings at this period.

On the seventh of May, 1784, a bill was reported to Congress by Thomas Jefferson "for ascertaining the mode of locating and disposing of lands in the western territory." The ordinance as reported contained complete directions for the survey of the land, and prescribed in detail the method and terms on which sales should be made.[1] The report was made a special order for May tenth, but was not called up until the twenty-eighth, when Congress voted to postpone its consideration indefinitely.[2] Nothing further was heard of it until March fourth, 1785, when it was again reported to Congress unchanged.[3] Copies of this report were sent to a few prominent men outside of Congress who were especially interested in the western country. The evident object of this

[1] Journals of Congress, iv., 416.

[2] *Ibid.*, 419. According to the popular belief of the American people, Jefferson is entitled to the credit of nearly all the wise provisions of the organic law of the western or northwest territory. It is commonly asserted that he was the author of the first provision for a federal land grant for educational purposes in the northwest, and the ordinance referred to above is cited as authority for the assertion. The present Commissioner of Education, Hon. John Eaton, has fallen into the popular current, and in an article in the January, 1884, number of *Education* (p. 293) says: "Mr. Jefferson was chairman of the committee that in May, 1784, made a report on the organization of the western territory, which provided 'that there shall be reserved the central section of every township for the maintenance of public schools, and the section immediately adjoining the same for the maintenance of religion.'"

I shall show further on in this paper that the ordinance as finally adopted did contain a provision for the reservation of school lands, but that it was inserted after Jefferson had left his seat in Congress, and at the suggestion of some one else. In order to leave no chance for error, my friend, Mr. F. H. Hodder, of Washington, examined at my request the original manuscript of Jefferson's report (preserved in MS., "Papers of Old Congress," vol. xxx., 59–65) and found it identical with the report as given in the printed journal, and that it contains no reference to a reservation or grant of lands for educational uses. Like many others, Mr. Eaton has mistaken the draft of the ordinance reported in April, 1785, long after Jefferson had left Congress, for the original report of 1784.

[3] Journals of Congress, iv., 477.

was to obtain their opinion of its acceptability to the people and to intending purchasers. Some of its provisions were criticised, and its omissions noted. Colonel Timothy Pickering, writing under date of March eighth, four days after the report was made, to Rufus King, a member of the committee, noted, among other objections, that there was "no provision made for ministers of the gospel, nor even for schools or academies"; adding, "the latter at least might have been brought into view."[1]

On the sixteenth of March the ordinance was referred to a committee consisting of one member from each State. Among these were Rufus King and William Grayson. On the twelfth or the fourteenth of April the committee reported a new ordinance, bearing the same title as the one drawn by Jefferson. While embodying many of the features of the latter, it contained numerous modifications, changes, and additions. Among others, the following clause had been inserted: "There shall be reserved the central section of every township for the maintenance of public schools, and the section immediately adjoining for the support of religion, the profits arising therefrom in both instances to be applied forever according to the will of the majority of male residents of full age within the same."[2] Rufus King sent a copy of this report to Colonel Pickering, and wrote: "You will find thereby that your ideas have had weight with the committee who reported the ordinance."[3] To Timothy Pickering, then, if to any one man, is to be attributed the suggestion which led to the first educational land grant. The object to be gained by such a clause was discussed by Grayson in a letter to Washington, dated April fifteenth, in which he wrote that "the idea of a township, with the temptation of a support for religion and education, holds

[1] 1 Pickering, 509. This is still another proof that Jefferson's report, which was identical with that of March fourth, did not contain provisions for schools.

[2] MS., "Papers of Old Congress," vol. lvi., 461. It is given with a slight amendment in the printed Journals of Congress, iv., 500. The report is in the handwriting of Grayson. This is the clause which Mr. Eaton erroneously credits to Jefferson.

[3] 1 Pickering, 511.

forth an inducement for neighborhoods of the same religious sentiments to confederate for the purpose of purchasing and settling together."[1] The ordinance was debated in Congress for a month. On the twenty-third of April the whole clause referring to religion was struck out, and on the twentieth of May the ordinance, amended in many particulars, was adopted. The territory was to be divided into townships six miles square, and each township subdivided into tracts one mile square, numbered from one to thirty-six consecutively. The mode and terms of sale were carefully prescribed. The clause relating to a reservation for schools, as amended and condensed by Congress, declared that "there shall be reserved from sale the lot No. 16 of every township for the maintenance of public schools within the said township."[2] This reservation marks the beginning of the policy which, uniformly observed since then, has set aside one thirty-sixth of the land in each new State for the maintenance of common schools.

The idea has become prevalent that this grand endowment is due solely to the zeal of the statesmen of that day in the cause of education; that disinterested generosity was the motive impelling Congress to make the first reservation and establish the precedent to be observed by all future generations of statesmen. While it is easy to misjudge motives, the evidence all tends to show other reasons for the action of Congress in 1785. Jefferson had several years earlier expressed broad and comprehensive views regarding education and the value of public schools.[3] Had the endowment of schools in the western country by Congress been generally considered proper or advisable, he would have been quick to utilize any suggestions of that nature, and to incorporate them in the organic law of the territory. Yet neither of the two ordinances, as drafted by him, referred by a single clause or word to the subject of education. It can-

[1] The letter is given in full in 1 Bancroft, Appendix, 425. In the same letter Grayson maintains that "the great design of the land office is revenue," and that the whole ordinance was framed with that in view.

[2] Journals of Congress, iv., 521; Public Lands, part i., 13.

[3] Morse, 48, 49; 8 Jefferson, 388.

not be urged that the idea had not yet been thought of, for the motion of Colonel Bland and the petition and letter of Putnam, both suggesting a land endowment for schools, had been before Congress for many months.

This negative sort of testimony is supplemented by evidence of a more positive character. Facts already stated in connection with the reservation point directly to the cause of its introduction into the ordinance. The first object of Congress was to sell the lands, in order to meet the obligations of the United States. They were pledged to dispose of them for the common benefit of the States. It is probable that Jefferson, like others, then and since, did not at the outset regard a gift of a portion of the territory for education as fulfilling that pledge. After the introduction of his second ordinance, it became evident that some provision must be made for schools, or few would venture into the wilderness away from civilization. Accordingly, as every interest of the country urged a speedy sale of the public domain, the reservation clause was finally inserted as an inducement to purchasers. Congress unquestionably expected that the value of the remaining lands would be increased, and purchasers more easily obtained.[1] The reservation was a gift from Congress, but was not made with the sole thought of promoting education. Rather was it offered because Congress was in a situation where it needed to sell the property, and its customers suggested this as one of the conditions of purchase.[2] Had any other equally feasible

[1] Chase, 32. Education in Ohio, 13. The same opinion was expressed by a Congressional committee in 1858: "The donation of section sixteen for the support of the township was an inducement to purchasers, and enhanced the value of the adjacent lands, the sale of which indemnified the government for the donation which it made."—Document E, 3. President Pierce in 1854 said: "Such reservations and grants are the acts of a mere landowner disposing of a small share of his property in a way to augment the value of the residue, and in this way to encourage the early occupation of it by the pioneer."—Senate Journal, 33d Cong., 1st Session, 368.

[2] "The sale of the public lands was the principal motive of these grants, and education only a secondary consideration, conducing, in the opinion of Congress, to effect the main purpose."—Extract from a report to the Illinois Legislature in 1823. *Apud* Pillsbury, cxxxix. See also a letter of Governor Woodbridge of Michigan. Shearman, 2.

condition been suggested, it is by no means certain that Congress would, at that time, have made this grand provision for education.

After the adoption of this ordinance, the petition of the New England soldiers, while it had served a good purpose in hastening the laggard steps of Congress, had no prospect of success. Realizing this, Generals Rufus Putnam and Benjamin Tupper issued a call through the newspapers of New England, in response to which a small meeting of citizens was held in Boston on the first day of March, 1786. At this meeting the Ohio company was formed for the purpose of purchasing a large tract of land on the Ohio River, and settling it with soldiers of the late war. During the year one fourth of the stock of the company was subscribed. In March, 1787, the stockholders elected Samuel Holden Parsons, Manasseh Cutler, and Rufus Putnam directors, with full power to negotiate with Congress for the purchase of the desired lands.[1] Parsons drew up a memorial in which he set forth the desires and proposals of the company. The paper was presented to Congress in May, and was immediately referred to a special committee.

On the fifth of July Dr. Cutler reached New York, where Congress was sitting. He immediately began in an energetic way to push the interests of the company. The proposition to plant a colony gave new importance to a subject which had engaged the attention of Congress at various times for more than a year.[2] The government provided for the western territory in 1784 had been designed as a mere temporary arrangement. Plans for its permanent organization had been presented in 1786. Discouraged by the slowness of the land sales and the slight tide of emigration to the west, Congress had not entered with zeal into the discussion of the bill. Now, however, animated by the prospect of a large sale, if a satisfactory form of government should be provided, Congress speedily took up the measure and referred it to a new committee. The committee bent themselves to their work and in two days reported back a new

[1] Hildreth, 193–199. [2] 2 Bancroft, 111, 112.

bill differing in many particulars from the plan referred to them.[1] It contained several new and vital provisions, among them a clause concerning education. Two days later, on the thirteenth of July, the measure became the famous ordinance of 1787 for the government of the "Northwest Territory."[2] After outlining the form of government, the ordinance contained six articles of compact, irrevocable except with the consent of the original States and the people of the States to be formed from the territory. The third of these articles declared that "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."[3] By this clause was the Congress of the United States pledged to make future provision for education, of which all succeeding generations should derive the benefit.[4] During these same days the proposals of the Ohio company to purchase lands were receiving careful consideration. In view of the financial straits of the United States, the successful conclusion of the negotiations was of vital importance to Congress. The committee to whom the matter was referred, after several conferences with Dr. Cutler, presented a report on the tenth of July recommending the sale on the terms demanded by the company. In accordance with those demands one lot in each township was to be reserved for the support of common schools, another lot for the support of

[1] For the bill as it went to the committee, see 5 *West. Law Jour.*, 534, or 122 *N. A. Review*, 242.

[2] This territory embraced the present States of Ohio, Indiana, Illinois, Michigan, and Wisconsin, and the portion of Minnesota lying east of the Mississippi River.

[3] Poore, 429.

[4] That the introduction of this and other features into the ordinance was due to Dr. Cutler, has been asserted with considerable force. Congress was anxious to provide an ordinance satisfactory to the company that offered to purchase so large a tract of land, and Dr. Cutler was invited to favor the committee with his views. It is certain that he proposed several amendments. His journal tells us that all his suggestions with one exception were embodied in the ordidance.—Walker, 56, 57; 53 *N. A. Review*, 336, 337. In the absence of direct proof there is much evidence tending to show that this clause was one of those suggested by him. The whole subject is ably discussed by W. F. Poole in the *N. A. Review* for April, 1876.

the ministry, and four townships for the establishment of a university.[1]

Though anxious to conclude the sale Congress regarded these reservations as too liberal, and in an ordinance, framed July nineteenth, stating the conditions of a contract, the only reservation made was lot number sixteen for schools, as provided in the general ordinance of 1785.[2] This was unsatisfactory to Dr. Cutler, and two days later another series of proposals was submitted by him, setting forth the only conditions on which the company would purchase the lands. Among these conditions it was specified that "lot No. 16 be given perpetually, by Congress, to the maintenance of schools, and lot No. 29 to the purposes of religion in the said townships. Two townships near the centre and of good land to be also given by Congress for the support of a literary institution, to be applied to the intended object by the legislature of the state."[3] These demands met with opposition in Congress, but the pressure of debts, the need for money, and the threat by Dr. Cutler to purchase lands elsewhere from some individual State, prevented a second rejection of the conditions. On the twenty-third of July an ordinance was passed,[4] which, with a few modifications made four days later on the further demand of Cutler,[5] authorized the Board of Treasury to contract for the sale of the land on the precise terms and with the exact reservations demanded by the company. This ordinance, and the subsequent contract by virtue of it, secured to the State of Ohio two townships for the perpetual support of a university. The same play of forces which brought about the school reservation in 1785 compelled the grant for a university in 1787. The latter was fairly wrung from the hands of an unwilling Congress. There was no display of zeal for education in the feeble body at New York which wielded the legislative authority of the United States. The persistency of Dr. Cutler, coupled with the dire necessity

[1] 2 Bancroft, 111.

[2] 122 *N. A. Review*, 262; Walker, 58; 53 *N. A. Review*, 337.

[3] *Apud* 2 Bancroft, Appendix, 433.

[4] 1 U. S. Laws (B. & D's Ed.), 573.

[5] Journals of Congress, iv., Appendix, 17.

of the government, was the force which won the day for the Ohio company and for higher education. To him and his fellow-directors belongs the honor of obtaining, with much labor, this first gift for a university.[1]

In the same year John Cleves Symmes contracted with the Board of Treasury for a large tract in the territory. Similar reservations were made for schools and the ministry, with one entire township for a seminary of learning. These two contracts, containing the gift of three townships for higher education, as well as the only appropriations ever made by Congress for the support of religion, completed the land legislation of the Congress of the Confederation. All other sales of public lands in the Northwest Territory have been made under the general land ordinance of 1785 and its successors.

After the adoption of the Constitution, a general law for the sale of public lands in the Northwest Territory[2] reserved from sale "for the future disposal of the United States," four sections at the centre of each township. Section sixteen was one of these four.[3] In 1804 Congress established three land districts (Vincennes, Kaskaskia, and Detroit) in the Territory of Indiana.[4] Following the precedent established by the ordinance of 1785, section number sixteen in each township was set aside for the use of schools within the same. In addition to that, one township in each land district was reserved for the use of a seminary of learning, and all salt springs with contiguous lands "for the future disposal" of Congress.[5] Indiana, Illinois, and Michigan

[1] 122 *N. A. Review*, 263.

[2] 1 U. S. Stat., 464.

[3] The title to the lands "reserved from sale" by the general laws thus far mentioned, still remained in Congress. When the provision was first adopted in 1785 it is not probable that the precise mode in which the lands should eventually be utilized had been decided upon. The policy was soon adopted of holding them until a State was formed, to which the school sections were given in trust. The university lands in the Ohio company contract and the seminary township in the Symmes purchase were, however, "to be used by the Legislature of the State when established."

[4] After Ohio became a State in 1802, the remainder of the Northwest Territory was known as the Territory of Indiana.

[5] 2 U. S. Stat., 277.

each subsequently received one of the seminary townships.

Owing to errors in running the surveys, and to the irregular course of the rivers which constituted the boundary lines of the new States, many fractional townships were formed. The early laws made no reservations for schools in such cases, but in 1826 a proportional amount of land was granted for that purpose to each fractional township.[1] Under the preëmption laws section sixteen in many townships was preëmpted by settlers and inadvertently sold by the United States. A law was enacted in 1859 granting other lands for schools in such cases.[2] The law also extended to cases where section sixteen was fractional or wanting "from any natural cause whatever." Under these laws each of the five States has received from the public domain for the support of schools an amount of land equal to a full thirty-sixth of its area. Thus has the government fulfilled, to the letter, the promise implied in the ordinance of 1785, to devote one thirty-sixth of the land for the primary education of all subsequent generations.

During the early years of the present century attempts were made by most of the original States to obtain land grants for their schools. They deemed it unjust that only the new States should be thus assisted by Congress. For various sound reasons not pertinent here, Congress declined to make such grants. While refusing to donate the lands themselves for educational purposes, many looked favorably upon a project to give to all the States, old and new, a certain per cent. of the proceeds of the sales of public lands.[3] This project was urged at several sessions of Congress. In 1825 it received the careful consideration of the Committee on Public Lands. The result of their investigations was embodied in an exhaustive report which discussed the question in all its phases. While they did not claim for Congress the right to use the proceeds of taxes, excises, etc., for the promotion of education, they considered such an appropriation of the moneys derived from public lands as constitu-

[1] 4 U. S. Stat., 179. [2] 11 U. S. Stat., 385.
[3] State Papers, 3 Public Lands, 496.

tional, proper, and wise from the standpoint of the government, and as certain to promote the general welfare of the people.[1] While the proposition never obtained the approval of Congress, the report is remarkable for its broad view of the relations of the national government to the education of the people. A later generation has advanced one step further in claiming that any national revenues may be used in this cause, but no later advocate of a broad construction of the powers of Congress over education has adduced a single valid argument which was not put forth in this report in 1825.

The policy of setting aside a certain section in each township for schools, regardless of the character of the land, gave rise to some inequalities in the endowment of the townships. In many instances the section fell upon poor or worthless land which could contribute little toward supplying school facilities. So long as each township derived its sole government support for learning from its own reserved section, the quality of the land was an important element in determining the character of the schools in the township. Many attempts were made to induce Congress to allow townships having an inferior section to exchange it for better land. Congress in considering the first of these petitions wisely declined to take a step which would have resulted in endless confusion, and have given rise to incessant demands for exchange, and opportunities for fraud.[2] This policy has been departed from on one or two occasions, but only for a single township in each instance.[3] In the States admitted since 1836 the proceeds of all sales of school lands have been consolidated into one fund, and the income distributed *pro rata* over the whole State. In this way the inequalities produced in the older States have been avoided, and all the people derive equal benefit from the grant.

About the year 1840 the States of Arkansas and Missouri memorialized Congress on the subject of draining and reclaiming a large tract of swamp lands lying along their common border. They represented that if Congress should

[1] State Papers, 4 Public Lands, 750. [2] 4 Cong. Debates, 479.
[3] Illinois School Reports, 1881–82, cxxxi.

not deem it proper to enter upon such work itself, they would undertake and complete the task provided the land in question was given to them as a partial compensation for the expense involved. For some time these memorials, renewed annually, obtained no response from Congress. At length, in 1847, the Commissioner of the General Land Office suggested that "such swamp and other lands as are from local causes unfit for settlement and cultivation in their present condition" be granted by Congress to the States in which they lie, "in order that such portions of them as may be reclaimed may be made productive and available to such States for purposes of education, internal improvement, and such other public uses as those States may deem best calculated to advance their own peculiar interests."[1] In 1848 the usual petitions of Arkansas and Missouri were referred to a select committee who reported a bill making a grant to those States.[2] This, however, failed to become a law. In the next Congress a bill was introduced which proposed to grant to the State of Arkansas, "to enable her to construct the necessary levees and drains," all the unsold swamp and overflowed lands in the State "made unfit thereby for cultivation." It was supposed that the sale of the lands when drained would in a great measure reimburse the State for the expenses of reclaiming them. In the committee to whom the bill was referred, its provisions and benefits were extended, "to each of the other States of the Union in which such swamp and overflowed lands may be situated."[3] With this broad extension it was passed in 1850.[4] The act required that "all legal subdivisions, the greater portion of which is 'wet and unfit for cultivation,' should be included" in the grants to the States, the only requirement in return being that the proceeds in any way de-

[1] Document B, 32.

[2] The reasons adduced by the committee were that the work was needed, that Congress would not and could not do it, and that from a mere pecuniary standpoint the United States would lose nothing, for the neighboring lands, then undesirable, would by the improvement be greatly increased in value.—Document C.

[3] 21 Globe, 232.

[4] 9 U. S. Stat., 519.

rived from them should be used, "as far as necessary," in reclaiming the lands. By this almost unexpected act the several States of the Northwest Territory received a valuable gift.[1] In these States much of the so-called swamp land, granted by the broad terms of the act, required little drainage, and a still greater amount, owing to the nature of the land, could be reclaimed at slight expense. These facts made it evident that a large sum above the cost of drainage would be derived from their sale. The law laid no restrictions upon the disposition of such a surplus, and several of the States, acting upon the suggestion of the Land Commissioner,[2] soon enacted that the whole or a portion of the net proceeds of the lands should be devoted to the support of common schools. Thus, though Congress gave no evidence of an intention to increase the endowment of education when granting the swamp lands,[3] the subsequent action of the States themselves brings the consideration of the management and disposition of the lands within the scope of this paper.

While Congress was engaged with the swamp-land bill, the establishment of schools or colleges whose special object should be to afford instruction in methods of agriculture and all kindred subjects, was beginning to attract attention in some of the Western States. The possible benefits of such schools were seen and urged by prominent agriculturists. Soon the Legislatures of the States became interested in the matter. The people remembered the great impulse and valuable assistance given by Congress to the cause of common-school and academical instruction, and it was not long before the idea of obtaining land grants for the endowment

[1] Prior to June 30, 1880, Ohio had received under this law 25,640 acres; Indiana, 1,257,588 acres; Illinois, 1,454,283 acres; Michigan, 5,659,217 acres; Wisconsin, 3,071,459 acres.—Document A, 222.

[2] *Supra*, 21.

[3] The possibility of a surplus revenue accruing to the States was known to the committee who reported the bill to Congress in 1850. In their report they quoted with approval the suggestion of the Land Commissioner regarding the use which the States might make of the proceeds of the lands.—Document D, 3. In the debates in Congress the question of a surplus, or its disposition, seems not to have been brought forward.

of these proposed agricultural schools presented itself as a proper and easy method of supporting them. In 1850 the Legislature of Michigan asked Congress for a grant of 350,000 acres of land for the establishment and maintenance of agricultural schools within the State.[1] Congress took no action upon the petition.

During the next few years the general interest in the subject increased. At every session of Congress memorials, resolutions, and petitions were received from individuals, from Boards of Agriculture, from Farmers' Conventions, and from State Legislatures asking for the national endowment of agricultural schools in each of the States. For several years these memorials received no attention, and there was an evident disinclination, even on the part of those members of the National Legislature who were friendly to the project, to urge its consideration. The reason for this is not far to seek. In 1854 President Pierce had vetoed a bill granting a large amount of land to the States for the establishment of asylums for the care of the indigent insane. The reasons given for the veto were that the care of the insane was a State matter, and that a grant of lands for such a purpose was unconstitutional.[2] Passages in the veto message made it certain that the President would also veto any measure which might come before him for the appropriation of lands for educational purposes. The friends of the project, therefore, allowed it to slumber during his administration.

In 1857 James Buchanan became President, and in the first session after his inauguration a bill was introduced in the House of Representatives[3] to grant to each State in the Union, for the maintenance of agricultural schools, a quantity of land equal to twenty thousand acres for each senator and representative in Congress to which the State was entitled. In any State where there were public lands, the lands granted to that State were to be selected therefrom; to every State in which the public lands did not equal the proposed grant, land scrip was to be issued to make up the deficiency. This

[1] Mich. Laws, 1850, 462. [2] Senate Jour., 33d Cong., 1st Session, 363–369.
[3] Globe, 35th Cong., 1st Session, 32.

the State must sell, not being permitted, for reasons of State policy, to locate the scrip upon lands in any other State.[1] The bill further required that the proceeds of the land or scrip should be invested in "safe stocks," yielding at least five per cent. interest; that no part should be used for buildings, and that only the income of the fund should be used by the schools or colleges for any purpose. Finally, any State to obtain the benefit of this grant must establish within five years at least one college "where the leading object should be, without excluding other scientific and classical studies, to teach such branches of learning as are related to agriculture and the mechanic arts."[2]

The members of the committee to whom the bill was referred did not agree in their opinions. The majority held that the bill was unwise and unconstitutional, and that "without a promise of pecuniary compensation Congress has no power to grant portions of the public domain; and if it had, no policy could be more unwise than to grant it for the support of local institutions within the States."[3] The minority favored the bill, arguing that the proposed grant was desirable and constitutional, since Congress had full power to dispose of the public domain as seemed wise to her.[4]

The reports thus disagreed concerning both the advisability and constitutionality of the measure. The struggle, begun in the committee, was renewed in Congress. In the long and hotly contested debate which ensued, it was urged, on the one side, that the object of the bill was good; that the interests of agriculture deserved and needed encouragement; that these interests formed a proper object of Congressional care;[5] that Congress had already made numerous

[1] The assignees and purchasers of the scrip could of course locate it upon any public lands in the United States.

[2] *Ibid.*, 1697.

[3] Document E, 1–5. The ground taken in the report was precisely that occupied by President Pierce in the veto message of 1854, and the line of argument in the two was identical. Mr. Cobb, the chairman, acknowledged that his own views were based upon the arguments of that message, and that previously he had held a different theory of the powers of Congress over the public lands.—Globe, 35th Cong., 1st Session. 1742.

[4] Document E, 6–14.

[5] Globe, 35th Cong., 1st Session, 1741.

grants for school and higher educational institutions; and that the Constitution gave the United States authority to make this and similar donations, since it armed Congress with power "to dispose of and make all needful regulations concerning the territory belonging to the United States." [1]

The opponents of the measure were nearly all from the Southern States. They were actuated by little hostility to agricultural and technical education, but few of them denying that the proposed colleges would be a benefit to the nation. Their opposition emanated from the ultra State-sovereignty spirit then prevalent in the south, and was based almost solely on constitutional grounds. They claimed that the bill attempted "to establish a new theory in the disposition of public lands and the relations of the government towards the States"; [2] that "it was just as much a violation of the duty of Congress to invade the province of the State governments under the head of donations as it would be to invade it by force and violence"; [3] that while Congress had power to dispose of the public lands for a consideration, it could not give them away [4] "without violating the beneficiaries' rights." [5]

In the face of so many precedents in favor of the grant, the objection on constitutional grounds lacked force, and the question in the minds of a large majority of Congress was entirely one of expediency. The bill passed Congress in February, 1859,[6] with slight amendments. The most important of these was that the distribution of the lands should be on the basis of the apportionment to be made in 1860. President Buchanan refused his assent to the bill. Basing his veto on the arguments used in Congress by its opponents, he held that it was unconstitutional, and that it

[1] *Ibid.;* also Globe, 35th Cong., 2d Session, 721. See Constitution, Article iv., Sec. 3.

[2] *Ibid.*, 187. [3] *Ibid.*, 715. [4] Globe, 35th Cong., 1st Session, 1741.

[5] Mr. Bayard covered the whole constitutional ground of the opposition when he stated that the bill was "in violation of the Constitution under a general grant of the power of disposing of the public lands by appropriating them for purposes not within the jurisdiction of Congress."—Globe, 35th Congress, 2d Session, 785.

[6] Senate Journal, 35th Cong., 2d Session, 278; House Journal, 428.

proposed an impolitic and unwise intermingling of state and national instrumentalities.[1] The friends of the measure were unable to pass it over the veto.

Petitions and memorials in favor of the grant poured in upon the next Congress in great numbers, and the project was again brought forward. The certainty that it would be vetoed, and the fact that the attention of Congress was drawn toward the impending troubles in the south, prevented its consideration. In the Thirty-seventh Congress a bill was introduced which was essentially a copy of the original measure of 1857, except that it granted 30,000 acres instead of 20,000, for each member of Congress. The debates which ensued developed no new features. Little opposition was offered on any grounds. Its opponents of 1858 were largely engaged in 1862 in battling on other than Congressional fields. The bill was passed, and was approved by President Lincoln on the second of July, 1863.[2] Its general provisions have already been stated.[3] By one clause no State while in rebellion was to receive the benefit of the act, but since 1865 all the Southern States have availed themselves of its provisions. Every State in the Union has established a college and received its quota of land or scrip.[4]

This grant is the last donation made by Congress for educational purposes. Various unsuccessful attempts have since been made to increase the grant made in 1863. Several petitions for an increased endowment of the common schools have also been laid before Congress. In 1872, the House of Representatives passed a bill granting to the States and Territories the net proceeds "arising from the sale, entry, location, or other disposition" of the public lands of the United States, "for the maintenance of common schools for the free education of all the children in the United States."[5] This comprehensive measure which would have devoted the whole public domain to educational purposes, contained many objectionable features. The method of distribution provided

[1] House Journal, 35th Cong., 2d Session, 501–508. [2] 12 U. S. Stat., 503.
[3] *Supra*, 23. [4] Document A, 230.
[5] House Journal, 42d Cong., 2d Session, 293, 294, 308.

in the bill tended to centralize in the national government a species of control over education, which is repugnant to the true spirit of State independence in domestic affairs. The Senate did not pass the measure.

The recent propositions to aid the States in educational matters by an appropriation of money, are based upon the same theory, and are open to the same criticisms as the bill of 1872. Inasmuch as they do not propose an appropriation of lands or their proceeds, the history of these measures lies outside the field covered in this sketch.

B.—LEGISLATION AFFECTING INDIVIDUAL STATES.

The school and seminary lands, reserved from sale by the general laws, remained under the control of Congress during the existence of the territorial government in the northwest. Whenever a State was carved out of the territory and admitted into the Union, the control over the educational reservations was transferred to the new State. This control was not absolute, however, but was limited by various conditions and restrictions, which were not the same in all cases. Subsequent laws pertaining to educational lands in individual States have also been adopted by Congress. Finally, special grants have been made to various educational institutions in the northwest. This special legislation naturally separates itself into five groups, corresponding to the five States formed from the original territory.

(*a*) OHIO.

By the ordinance of 1787 provision was made for the eventual division of the Northwest Territory into not more than five States, each of which should be eligible to admission into the Union when it should have attained a population of sixty thousand. In 1802, the eastern division of the territory applied for admission. In April of that year a law was passed to enable the people to form a constitution and State government.[1] By one section of the act several con-

[1] 2 U. S. Stat., 173.

ditional propositions were submitted for the acceptance or rejection of the convention which should be called to frame a State constitution. These propositions and the attendant conditions were:

"*First.* That the section number sixteen in every township * * * shall be granted to the people of such township for the use of schools.

"*Second.* That * * * [certain] salt-springs, with the sections of land which include the same, shall be granted to the said State for the use of the people thereof, * * * *Provided*, That the Legislature shall never sell nor lease the same for a longer period than ten years.

"*Third.* [One twentieth of the net proceeds of the sales of public lands in the State, granted for building roads.]

"*Provided always*, That the three foregoing propositions are on the condition, that the convention of the said State shall provide by ordinance, irrevocable without the consent of the United States, that every tract of land sold by Congress, from and after the thirtieth day of June next, shall be exempt from any tax laid by order or under authority of the State, * * * for the term of five years from and after the sale."

The compact in the ordinance of 1787 had provided that the States to be formed from the territory should never interfere with the primary disposal of the soil, and should levy no tax on the property of the United States.[1] In 1802 the government was selling public lands on five years' credit, and the patent was not issued until the final payment was made.[2] The Secretary of the Treasury held that under the ordinance of 1787 the lands could not be taxed until the patent issued, because till that time they were the property of the United States.[3] The conditions contained in the

[1] "The Legislatures of those districts or new States shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona-fide* purchasers. *No tax shall be imposed on lands the property of the United States.*"—Ordinance, Art. v.; Poore, 432.

[2] 2 U. S. Stat., 73.

[3] "An attempt on the part of the Legislature of the territory or new State to

propositions of Congress in 1802 were therefore but a more explicit statement of certain agreements of the ordinance of 1787, which were already obligatory upon the whole territory, and irrevocable without the consent of the United States.[1] Had the condition been omitted from the law of 1802, the State of Ohio would not have been able to tax the lands one moment sooner, so long as the existing system of selling the lands was continued.

But why did Congress impose such a condition in 1802, if nothing new was gained thereby? Why was it made to appear that these grants were offered in return for a concession, by the State, of privileges which, in reality, it had never possessed? Why was the law so framed as to conceal the munificence of the United States, and make the whole affair appear a mere bargain? The history of the measure in its various stages in Congress affords an answer, and throws a clear light upon the origin of this so-called contract, which was misinterpreted by a later generation of legislators and presidents, searching for constitutional arguments against the power to grant lands for any object "without a compensation therefor."[2]

In the committee of Congress to whom the duty of drafting a bill for the admission of Ohio was referred, there was manifested a desire to shield the public lands from all possible encroachments by the new State, and to offer to immigrants still stronger attractions than already existed. It occurred or was suggested to this committee that the exemption of these lands from State taxation for some years after the first purchaser had acquired the title to them would be one of the strongest possible inducements. It was conceded, however, that the United States could not, without the consent of the State, impose other limitations on the latter's power

render lands, sold under the laws of Congress, but for which no patent has yet issued, liable to be sold for non-payment of taxes, would interfere with the regulations adopted by Congress for the 'primary disposal of the soil.' . . . The district or State Legislature has not a right to tax, or at least to sell for non-payment of taxes, the lands on which, though conditionally sold, the United States still retains a lien."—State Papers, 1 Miscellaneous, 327.

[1] Campbell, 451. [2] *Supra*, 24, 25.

of taxation than those made in the ordinance of 1787.[1] In this dilemma the Secretary of the Treasury, Mr. Gallatin, suggested that certain grants be offered as an inducement to the State to make the desired concession regarding taxation.[2] Acting on his suggestion the committee, in its draft of the resolutions or bill, proposed that the three grants be offered to the State, on condition that "every and each tract of land should be exempt from taxation for the period of *ten years from and after the completion of the payment of the purchase money* on such tract to the United States."[3]

This condition and exemption was far broader than that made in 1787. It would have relieved the land from taxation for fifteen years after its sale and ten years after the government had ceased to have any title in the property sold. When the bill came before Congress for final consideration, it was so amended as to make this clause[4] simply a repetition, in more definite terms, of the existing restrictions. At the same time the form of the contract was retained,

[1] In a letter to the chairman of the committee, Mr. Gallatin says: "It does not appear to me that the United States have a right to annex new conditions, not implied in the articles of compact, limiting the legislative right of taxation of the territory or new State. Indeed, the United States have no greater right to annex new limitations than the individual State may have to infringe those of the original compact." Annals, 7th Cong., 1st Session, 1100, 1101. State Papers, 1 Miscellaneous, 327.

[2] "If it be in a high degree, as I believe it is, the interest of the United States to obtain some further security against an injurious sale, under Territorial or State laws, of lands sold by them to individuals; justice not less than policy requires that it should be obtained by common consent, and as it is not to be expected that the new State Legislature should assent to any alterations in their system of taxation which may affect the revenues of the State, unless an equivalent is offered which it may be their interest to accept, I would submit the propriety of inserting in the act of admission a clause or clauses to that effect, leaving it altogether optional in the State convention or Legislature to accept or reject the same. The equivalent to be offered must be such as shall * * * be fully acceptable to the State, and at the same time prove generally beneficial either in a political or commercial view to the Union at large." He then suggests the propositions in the form in which they were subsequently reported to Congress by the committee.—*Ibid.*

[3] State Papers, 1 Miscellaneous, 326.

[4] *Supra*, 28 and Note 1.

though by the amendment it was made valueless, and all necessity for its retention removed. Had the terms proposed in the original bill been adopted by Congress and accepted by the State, the contract would have involved a new and valuable consideration on each side. As it stands, only by ignoring the ordinance of 1787 can it be said that the grants of 1802 were made "only upon conditions which more than indemnified the United States."[1]

When the constitutional convention of Ohio came to consider these propositions, several objections were offered to them. As already stated, the lands in the Connecticut Reserve and the Virginia Military Reservation were on a different basis of proprietorship from the other land in the territory.[2] The laws reserving the sixteenth section for school purposes had not applied to these tracts, nor did the grant now proposed extend to them. The Indians also possessed many lands in the State, and no provision had been made for a grant for schools in such tracts, when the United States should have extinguished the Indian claims. These points did not escape the notice of the convention.

The propositions were finally accepted on condition that Congress should make provision for schools in the Connecticut Reserve, the Virginia Military Reservation, and the United States Military District,[3] by granting an amount of land equal to one thirty-sixth of the territory of these districts; that a like proportion should be granted of any lands in the State subsequently acquired from the Indians; that these lands and those already offered by Congress should be vested *in the State* for the use of the schools in each township or district, and, lastly, that Congress should grant one town-

[1] This view is further substantiated by the fact that after the abandonment of credit sales by the government, all States upon admission to the Union, while receiving similar grants, were permitted to tax public lands as soon as they were sold.—Pillsbury, cxxii. Further still, in 1847, the States which, upon their admission, had agreed to the five years' exemption, were permitted thereafter to tax lands immediately after the sale.—9 U. S. Stat., 118.

[2] *Supra*, 9, Notes 5 and 6.

[3] This was a large tract appropriated by Congress in 1796 to satisfy land bounties granted by the United States to soldiers of the army of the Revolution.—1 U. S. Stat., 490.

ship for a seminary in lieu of the one mentioned in the contract with Symmes, which, for some reason, had never been set apart.[1]

When this decision was made known to Congress, the committee appointed to consider the demands, ignoring all questions of indemnity and contracts, took its stand on the broad principle that the reservation of one thirty-sixth of the lands for the use of schools, as established by the ordinance of 1785, was equally liberal and wise; that to this principle it was "a sound policy to adhere and to extend it wherever practicable."[2] The views of Congress agreed with those of the committee, and the desired appropriations were made from public lands in the State.[3]

In the discussion of this measure the right to appropriate lands for educational purposes in the States was called in question for the first time in Congressional debates. Those who denied the right called attention to the fact that, by the terms of the Virginia cession, the public domain must be disposed of for the common benefit of the States. They asserted that to donate to one State a portion of the lands was to benefit the people in one part of the country at the ex-

[1] State Papers, 1 Miscellaneous, 343. 21 Ohio Laws, 44.

[2] The following is from the report of the committee: "The ordinance passed by Congress on the 20th day of May, 1785, established the principle of reserving one thirty-sixth part of the lands sold for the use of schools. To this principle, equally liberal and wise, your committee believe it a sound policy to adhere and to extend it wherever practicable. They are aware of the objection that the right of soil in the tract of country commonly called the Connecticut Reserve, having been ceded by Congress without any valuable consideration, and no reservation having been made for the support of schools therein, the inhabitants of that portion of the State of Ohio have not equal claims on the bounty of Congress with those who, having purchased their lands of the United States, have contributed large sums to the public treasury. * * * But when it is considered that the provision for schools embraces not the emolument of individuals, but the interests of morality and learning, the committee are of opinion that Congress will perceive the propriety of acceding to a proposition, the tendency of which is to cherish and confirm our present happy political institutions and habits. This last consideration applies equally to the United States military tract, to the military reservation of Virginia, and to lands which may hereafter be acquired from the Indian tribes."—State Papers, 1 Miscellaneous, 340, 341.

[3] 2 U. S. Stat., 225.

pense of the rest; hence it was plainly an act of usurpation, in violation of the cession and unwarranted by the Constitution.[1] The advocates of the grant did not claim that the mere advancement of education in a particular State was a benefit to the other States. The day had not yet arrived when education was considered a part of the "general welfare," for which Congress may provide. The bill was defended on the ground that the donation would enhance the value of adjacent lands and attract settlers; that the remaining lands would afford a greater revenue because of the donation than the whole of them with no provision for education; and that for this reason the appropriation was a direct benefit to the whole Union.[2]

The grant made for the Virginia Military Reservation was subsequently found to be in such form as to make it unavailable for many years, and in 1807, in response to a petition from the General Assembly of Ohio,[3] a second and more specific appropriation was made in lieu of the former grant.[4] In 1805 the Indians relinquished their claims upon that portion of the Connecticut Reserve which they had hitherto occupied. It was not until 1834 that Congress, after numerous petitions from the General Assembly, granted to the State an amount of land equal to one thirty-sixth of the area

[1] "With what face of justice can we then put our hands into this common fund, or lay hold of any portion of these lands and apply them to the use and benefit of the people of one part of the country, to the entire exclusion of all the rest, as is contemplated by this bill? What authority have we to give the people of Ohio land equal to a thirty-sixth part of their whole State? It appeared to him an assumption of power which did not of right belong to them. It was an act of usurpation which he had not been able to discover any principle whatever to warrant or justify."—Annals of Congress, 7th Cong., 2d Session, 585.

[2] "While it [the proposed grant] protected the interests of literature it would enhance the value of property. Can we suppose that emigration will not be promoted by it, and that the value of lands will not be enhanced by the emigrant obtaining the fullest education for his children; and is it not better to receive two dollars an acre with an appropriation than seventy-five cents without such an appropriation? The gentleman is averse to a proposition which gives up nothing, but which will necessarily enhance the value of public property."—*Ibid.*, 586, 587.

[3] 5 Ohio Laws, 132.

[4] 2 U. S. Stat., 424.

of this tract.[1] This, with a small amount given in 1824,[2] completed the quota of school lands promised in 1802.

In 1824 the General Assembly petitioned Congress for leave to sell the thirty-eight sections of salt-spring or saline lands[3] and to apply the proceeds to literary purposes. At the following session of Congress the sale of these lands was authorized, "the proceeds thereof to be applied to such literary purposes as the said Legislature may hereafter direct, and to no other use, intent, or purpose whatsoever."[4] Finally, in 1871, all the unsold portions of the Virginia Military Reservation were granted to the State[5] and given by the latter to the Ohio Agricultural and Mechanical College.

In addition to these bountiful donations, the State at various times sought gifts for special educational purposes. The Legislature petitioned Congress in 1828 for a township of land for the education of the deaf and dumb,[6] and for a grant to Kenyon College,[7] and in 1834 for an appropriation of "a part of the proceeds of the national domain for purposes of education."[8] These and other petitions of a kindred nature received various degrees of attention in Congress, but all of them failed in their object.

The journals of Congress, from 1820 to 1860, are dotted with records of memorials, from nearly all the States, seeking grants for educational projects. Did a State desire to increase its school facilities, or start a new college, or assist an old one, the national government was immediately asked for land to further the accomplishment of the desire. Congress, having dealt liberally and impartially with each State at the time of its admission, has wisely refused to expend the public domain upon miscellaneous educational schemes, which ought to be supported by State resources. In a few instances only, has this policy been departed from, and then for special and valid reasons.

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[1] 4 U. S. Stat., 679.
[2] 4 U. S. Stat., 56.
[3] *Supra*, 28.
[4] 4 U. S. Stat., 79.
[5] 16 U. S. Stat., 416.
[6] State Papers, 4 Public Lands, 889.
[7] 26 Ohio Laws, Local, 174.
[8] State Papers, 6 Public Lands, 969.

(*b*) INDIANA.

In 1805 the Detroit land district [1] became the Territory of Michigan.[2] Four years later the Kaskaskia land district, containing essentially the territory now embraced in the States of Illinois and Wisconsin, was reorganized as the Territory of Illinois.[3] The Territory of Indiana, thus reduced in size, continued under its territorial government until 1816, when the inhabitants petitioned Congress for its admission as a State. Congress passed an act for its admission [4] wherein propositions similar to those made in the case of Ohio were offered to the constitutional convention upon the same conditions. There was, however, this important addition: "That one entire township, which shall be designated by the President of the United States, in addition to the one heretofore reserved for that purpose,[5] shall be reserved for the use of a seminary of learning and vested in the Legislature of the said State, to be appropriated solely for the use of such seminary by the said Legislature." The school lands were to be granted not to the State but to the people of each township. Thirty-six sections of saline lands were given instead of thirty-eight as in the case of Ohio. These propositions were accepted by the convention without modification.

In 1832 the Legislature was at its own request [6] authorized to sell the saline lands at a price not less than that of public lands, the proceeds to be applied to the purposes of education.[7] In 1852 this limitation on the price was removed.[8]

The title to a portion of the seminary lands granted to the State became the subject of litigation, in 1844, between two educational institutions, each of which claimed the lands under authority of acts of the Legislature. In 1854, after the case had been decided in the courts, the United States, in response to petitions from the defeated claimant and the legislature, granted an additional amount of land equal to that involved in the litigation.[9] This was certainly a gift

[1] *Supra*, 18.
[2] 2 U. S. Stat., 309.
[3] *Ibid.*, 514.
[4] 3 U. S. Stat., 289.
[5] *Supra*, 18.
[6] Indiana Laws, 1827, 103.
[7] 4 U. S. Stat., 558.
[8] 10 U. S. Stat., 15.
[9] 10 U. S. Stat., 267.

"without any compensation." The seminary townships had both been devoted to the use of colleges, and as it was neither contrary to the terms of the grant that the proceeds were divided by the Legislature between two institutions, nor through any neglect or fault of Congress that the double claim to them had arisen, no obligation rested on Congress to make restitution for an unfortunate blunder of the State authorities. In 1873 Congress granted to Vincennes University all vacant and unclaimed lands in Knox County, Indiana.[1]

(*c*) ILLINOIS.

When the people of the Territory of Illinois applied for admission into the Union in 1818, the grants made to her for educational and other purposes, though based upon the usual conditions, differed from previous grants in two important features. The school sections and the saline lands were granted to the State on the same terms as in the case of Ohio. Instead, however, of granting five per cent. of the proceeds of public lands for building roads, as had always been done in previous cases, the act set apart two per cent. for that purpose and three per cent. "to be appropriated by the Legislature of the State for the encouragement of learning, of which one sixth part shall be exclusively bestowed on a college or university."[2] This new feature, which promised a large additional fund for education, was introduced at the instance of the delegate in Congress from the Territory of Illinois.[3] He supported it on the ground that in other States the fund for building roads had been used in such ways as to produce little benefit; and that the soil of the proposed State was such as to afford her with little labor "the finest roads in the world." He then showed that to devote a portion of the five per cent. to the education of the people would confer the greatest possible benefit upon the people of the new State, because this fund would afford an immediate income while the educational lands were still lying unproductive.[4] However one may be disposed to

[1] 17 U. S. Stat., 614.
[2] 3 U. S. Stat., 428.
[3] Annals, 15th Cong., 1st Session, 1677.
[4] *Ibid.*, 1678.

question his statement concerning the roads in Illinois, it is true that the proposition to devote the proceeds to education had much in its favor. This novel and important amendment was unanimously adopted.

While two townships were granted for higher education, the appropriation was made in such terms as to permit the State to select at least one half of the lands in small tracts wherever a choice piece might be found. The older States had been compelled to locate each township as a single tract. As it is rare that all the land in any one township is valuable, the result was that Illinois obtained much better lands for higher education than could have been selected under the old requirement. The saline lands in Illinois, though subsequently sold, were not used for purposes of education.

(*d*) MICHIGAN.

In 1835 the Territory of Michigan held a convention and framed a State constitution. This constitution was adopted and the machinery of State government set in motion after application to Congress for admission into the Union, but before Congress had acted upon the application. The action of the territory was denounced by many members of Congress, who regarded the consent or authority of the United States as an essential preliminary step in the formation of a State government. The justification of the action of Michigan was found in the organic law of the territory. The ordinance of 1787 provided that the States formed from the Northwest Territory should be admitted upon the attainment of sixty thousand inhabitants. The population of Michigan exceeded that number. That she could not be admitted as a State without the action of Congress may have been true. That she had the right to frame a constitution and prepare for admission without the consent of Congress was a proper interpretation of the ordinance. The "irregular" proceedings of Michigan were used in Congress as a cloak to cover other deep-seated objections to her immediate admission as a State. These are not, however, germane to the present subject.

A dispute as to the boundary line between Michigan and Ohio also introduced a disturbing element into the question. At length an act was passed for the admission of the new State on the acceptance by a convention of the people of certain boundary lines on the south, in return for which a large tract between Lake Michigan and Lake Superior was to be attached to Michigan.[1] So little were the mineral resources of the Lake Superior region known at that time, that the first convention rejected the propositions, thinking a tract a few miles in width along the southern border of more value to the State than the wilderness of the upper peninsula. A second convention, called and held without any legal authority,[2] accepted the conditions. Congress, assuming that this convention was a legally organized body, admitted the State in 1837.

The ill feeling engendered in Congress by these disputes militated against the desires of the people of the State concerning education. The convention which framed the constitution in 1835, reversing the usual order of things, adopted an ordinance submitting several propositions to Congress for their approval or rejection.[3] Of the propositions touching educational matters the first provided that the sections number sixteen should be granted "to the State for the use of schools." This seemingly slight change from the usual terms[4] was made designedly and was of great importance. In the other three States the funds arising from each school section were required to be kept separate. While some townships had accumulated large funds, others, owing to poor lands or mismanagement of the proceeds, had little or nothing. By the proposed change the proceeds of all school lands in Michigan would be consolidated into one State school-fund. This could be more easily, safely, and economi-

[1] 5 U. S. Stat., 49. [2] Campbell, 477, 478.

[3] Journal, Mich. Constitutional Convention, 1835, 219, 220.

[4] In the case of Illinois the law provided "that section number sixteen in every township shall be granted to the State *for the use of the inhabitants of such township* for the use of schools."—3 U. S. Stat., 428. In Indiana each school section had been granted directly to the people of the township in which it lay.—3 U. S. Stat., 289.

cally managed, while the income would be distributed *pro rata* to all parts of the State, thus insuring uniformity and equality in school facilities.

The second proposition secured the seventy-two sections or two townships of university lands to the State. The saline lands were to be granted to the State, unconditionally, and the usual five per cent. of the proceeds of public lands was to be distributed essentially as in Illinois—two per cent. for building roads, and three per cent. "to the encouragement of education."[1] Should Congress make these and other specified gifts, the State agreed to exempt public lands from taxation. Since the United States had ceased selling lands on credit, and the necessity and object of the exemption for five years no longer existed, the State, while conforming to the compact of 1787, omitted the usual clause providing such exemption.[2]

These propositions were rejected by Congress. Some of their features, however, were embodied in a series of propositions, afterward submitted by Congress to the State Legislature,[3] and accepted by the latter.[4] In this way the State succeeded in obtaining some of the desired modifications in the usual educational endowment provided for new States. The school lands were granted directly to the State as had been desired. The grant of the saline lands was limited to the power to lease them.[5] The five-per-cent. fund was to be used wholly for internal improvements, in obedience to older precedents, thus leaving Illinois as the only State, up to that time, in which a portion of the five-per-cent. fund was devoted to educational objects.

The conditions on which these grants rested were the same as those offered by the propositions of the constitutional convention—the State was to agree not to tax public lands, nor interfere with the primary disposal of the soil.[6]

[1] Journal, Const. Conven., 1835, 220.

[2] *Ibid.*

[3] 5 U. S. Stat., 59.

[4] Mich. Laws, 1835–6, 57.

[5] In 1847 permission was given to the State to sell these lands (9 U. S. Stat., 181), the State Legislature having represented to Congress that the lands "in their present form are unavailable and unproductive for the objects intended by the grant."—Mich. Laws, 1845, 154.

[6] This is almost the identical language of the ordinance of 1787.

This last innovation was strenuously opposed in Congress, where it was immediately perceived that it destroyed the *quid pro quo* appearance of the contract, on which many had become accustomed to lay stress in developing their theories of the powers of Congress under the Constitution. The change did operate to the advantage of Michigan as compared with Ohio, Indiana, and Illinois (and all other States admitted after 1802), but in the principle there was no change. Now as before the requirement was that public lands should not be taxed until the title had passed to individuals—until they had ceased to be public lands. The change in the system of selling lands produced the corresponding change in the form of these conditions. The new features of the propositions submitted at the admission of Michigan, have been used in the case of all States admitted since.

(*e*) WISCONSIN.

In 1836 the region now embraced in Wisconsin was detached from Michigan,[1] and formed into a separate territory.[2] In the laws reserving seminary townships for the Northwest Territory[3] the creation of a fifth State seems not to have been contemplated and no reservation was made for it. In 1838, however, on application of the territory, seventy-two sections or two townships were set apart for the use and support of a university within the territory.[4] When the territory applied for admission as a State in 1846 the usual propositions were offered to the constitutional convention.[5] In this convention the subject of education received special and unusual attention. The constitution which was framed by the convention provided that all lands granted to the State for educational purposes (except the university lands), all grants whose purpose was not specified, the five hundred thousand acres for the promotion of internal improvements, to which the State was entitled under a previous law, and

[1] Until 1818 it had formed a part of Illinois, but was detached therefrom and joined to Michigan, when Illinois became a State.

[2] 5 U. S. Stat., 10.

[3] *Supra*, 18.

[4] 5 U. S. Stat., 244.

[5] 9 U. S. Stat., 56.

the five per cent. of the proceeds of the public lands should form a permanent school fund.[1] This proposed use of the internal-improvement lands and the five-per-cent. fund, differed from that designated by Congress. The change proposed by the State could become operative only with the consent of the United States. The experience of Michigan showed the difficulties in obtaining the favorable action of Congress in such matters. However, the convention urged upon the National Legislature the advantages likely to result from the change. In 1848 Congress consented to the provisions of the constitution.[2] Wisconsin thus started out with a school endowment far greater in proportion to the area of the State than that of any of its older sisters. Had the wisdom and care subsequently shown in managing the grant been equal to the zeal displayed in obtaining it, the State would to-day be surpassed by no other in the amount of its educational funds.

The seventy-two sections of salt-spring lands included in these grants were never selected. In their stead Congress, in 1854, authorized the selection of an equal amount from any public lands in the State "for the benefit and aid of the State University."[3] This provision doubled the land endowment of the State University, which had received the benefit of the original seminary funds.

[1] Constitution, Art. X., Sec. 2. [2] 9 U. S. Stat., 233. [3] 10 U. S. Stat., 597.

PART II.

STATE LEGISLATION AND MANAGEMENT OF THE GRANTS.

A.—SCHOOL AND SWAMP LANDS.

In investigating the history of the management by the States of the various grants for schools, a study of the territory as a whole would present but a confused and unsatisfactory view of the subject. In one State the lands have been managed by local officers in the different townships, in another they have been controlled by one central authority, while in others they have been subject to the joint control of State and local officers. Again, in some States the policy of leasing prevailed in the earlier days, while in others sales were ordered at the outset. Still further, different theories as to the investment of the resulting funds have obtained in different States. For these reasons a separate examination of the policy and legislation of each State becomes necessary.

(*a*) OHIO.

The sixteenth sections were not formally given to Ohio until her admission as a State, and until then no steps were taken to utilize them for school purposes. The territorial authorities, however, seem to have exercised a supervisory control over the reserved tracts, for in 1799 a measure was adopted "to prevent the committing of waste" on the school lands.[1]

[1] Education in Ohio, 13.

As Ohio was the first State coming into possession of an extensive land endowment for education, she could look to no older State for ideas concerning its management. By the terms of the grant, in whatever way the lands were disposed of, only the income arising from them could be expended. The fund itself, whether kept in lands or turned into money, must remain intact forever. The constitution adopted in 1802 gave no directions for the management of this valuable trust. The task of devising a method of guarding and utilizing it was thrown upon the Legislature. In those early days the opinion seems to have been unanimous that educational interests would be best promoted by leasing the lands and applying the rents to the maintenance of schools. Abstractly considered, this policy rests upon a solid foundation. So long as public lands are abundant in a State—and they always are in a new State—it would be vain to expect that men will pay a higher price for school lands than is demanded by the United States for lands of the same quality, unless more favorable terms of payment are offered for the former. If, however, they can be leased until the best public lands have been sold, this difficulty is avoided. They can then be thrown upon the market at higher prices, and thus produce a larger permanent fund. While the State is sparsely settled, fewer schools are needed, and the annual rents from the leased property afford some revenue for that purpose. In this method there are, however, certain practical difficulties to which attention will be called in subsequent pages.

The first General Assembly of Ohio, in April, 1803, ordered the school lands to be leased for periods varying from seven to fifteen years.[1] The object of the act was not an immediate income, but, as the law itself declared, the improvement of the land, in order to make it productive of revenue in the future. The rent was not to be paid in money but by clearing a certain number of acres and planting trees. The business of leasing was entrusted to agents in the various counties and districts. The applicant who offered to make

[1] 1 Ohio Laws, 61.

the improvements on a piece of land in the shortest time was to be given the lease. Comparatively few tracts were rented under this law. The long credit then given by the national government to purchasers of public lands placed them within the reach of many who would have been unable to make full payment at the time of purchase.[1] This fact operated against the tenant system until Congress adopted the cash policy in its sales.

In 1805, leases for a money rent were authorized. These were at first confined to the sixteenth sections.[2] The township trustees were vested with the power to lease these for not more than fifteen years, "to those who made the most advantageous proposals." The rent was to be "impartially applied to the education of the youths" in the township where the leased land was situated.[3] By the land laws of the United States the western territory was laid off into townships of a fixed size. When for civil purposes Ohio was divided into counties and the counties sub-divided into townships, it frequently happened that the boundaries of these civil townships did not coincide with those of the surveyed townships of six miles square. Section sixteen had been granted for the benefit of the inhabitants of each original surveyed township. In 1806 these latter townships were incorporated with power to elect three trustees and a treasurer "for the purpose of leasing and managing" the school lands on the terms prescribed in the previous law.[4] For several years these general provisions for the sixteenth sections remained unchanged. Many lands were leased, and

[1] Governor Tiffin said, in 1804: "But few of the school sections are yet leased, and it is presumed for want of observing a more liberal policy, for when the means of acquiring a fee-simple to lands are so easy and almost within the reach of all, but few will be induced to improve lands not their own without sufficient compensation."—3 House Journal, 9.

[2] It will be remembered that the school lands belonging to the Connecticut Reserve and the two military districts were not sections sixteen. The school legislation for each of these districts is entirely distinct from that applying to the rest of the State.

[3] 3 Ohio Laws, 230.

[4] 4 Ohio Laws, 66. Only those townships which contained twenty electors came within the provisions of the act.

though the rent was small the constantly increasing value of the property afforded the prospect of a larger income after the expiration of the first leases.

The Legislature next turned its attention to the school lands belonging to the Virginia Military Reservation. For some reason the provisions of the previous laws were not applied here. With the very first act the State entered upon an unfortunate and unwise course which was not abandoned until a considerable portion of the fund had been irrevocably lost to the people of the district. By a law of 1809 the lands were to be surveyed and "sold" at public auction at not less than two dollars per acre, and the costs of the survey and sale. These costs were to be paid in cash. On the remainder the purchaser was required to pay six per cent. interest "yearly, forever, subject, however, to alteration by any succeeding Legislature, so as to enable the purchaser or purchasers to make such commutation as said Legislature may think expedient."[1] The title to the land did not pass from the State. A lease for ninety-nine years, renewable forever, was given to the successful bidder. By the proviso in the law, the lease might be altered in favor of the lessee, but not in favor of the State.

This was an evident attempt to force the school lands belonging to the district upon the market by offering more favorable terms than those given by the United States on public lands. To purchase government lands the settler must pay one fourth of the purchase money immediately, and the balance within five years. To purchase the school lands at the same price per acre he needed only to pay the petty expenses of the survey. For the moneyless immigrant here was a grand opportunity. To the school fund on the other hand it meant loss and waste. As far as the State was concerned, to rent on these terms was equivalent to selling outright. Not a single advantage claimed for the leasing system in its application to school lands can be found in this plan. Under a system of short leases any increase in the value of the property inures to the benefit of the lessor, and

[1] 7 Ohio Laws, 109.

enables him to demand higher rent on a subsequent lease. But a system of permanent leases, such as was set up by this law, deprived the schools forever of any benefit from the increased value, and gave the entire advantage to the lessee.

The Legislature did not stop here. In the following year the law was so amended as to permit the lessee at the time of "purchase" to make a cash payment of ten dollars per quarter section in lieu of the costs of survey and the first five years' rent.[1] The rent thus commuted for ten dollars, even if the lands had been leased at the minimum valuation allowed by law, would have amounted to ninety-six dollars.[2] As the result of these laws there are to-day under lease about ten thousand acres in this district at an annual rent of twelve cents per acre.[3] In 1810 the governor expressed a mild doubt whether these laws were beneficial to the interests of the schools.[4] Not till many years later, however, did any general opinion arise that such legislation was unwise.

From the terms of these laws one would infer that the wants of the schools in the district were pressing, and that an immediate income was desired and needed for the education of the children. Great, then, is one's surprise at finding that the rents were not used for school purposes for twenty years after the first leases were given. From 1815 until 1829 the money lay in the State treasury, subject to the use of the State. For six years of that time it brought no increase, but in 1821 the State began paying interest which was compounded annually.[5] In 1829 the fund was for the first time applied to the cause of education. The whole accumulated income was distributed over the Reservation,

[1] 8 Ohio Laws, 254.

[2] Even this did not satisfy the lessees, for in 1820 they represented to the Legislature that they had not understood that rent was to be paid until the expiration of six years from the dates of their leases. The Legislature therefore absolved them from the payment of rent for another year, although the original act could hardly have been misunderstood.—18 Ohio Laws, 71.

[3] Education in Ohio, 28.

[4] "It will not be an unimportant inquiry whether the most effectual measures have yet been taken to render the . . . [school] lands in this State subservient to the purposes for which they were granted."—9 Senate Jour., 8.

[5] 19 Ohio Laws, 146. Education in Ohio, 21.

and an annual distribution was to be made thereafter of all rents accruing.[1] Had the lands lain idle until the rent was thus properly used, they could probably have been leased for twice the sum obtained in 1809 and 1810.[2]

The General Assembly of 1816 realized the improvidence of such perpetual leases. Repealing the previous laws they provided that thereafter the lands in this district should be leased to the highest bidder for ninety-nine years, but that in 1835 and every twenty years thereafter the lands should be revalued by appraisers appointed by the governor, and that the lessee should pay an annual rent of six per cent. on each valuation until the next was made.[3] If fair appraisals could be ensured, a lease of this kind was even more advantageous than a shorter one, for to the good features of the latter it added the certainty of a permanent as well as increasing income.

During the years in which the lands of the Virginia Military District were passing from the hands of the State, the general law of 1805–6, providing for the lease of sections sixteen for periods of fifteen years, remained in force. Its value, however, had been in a great measure destroyed by special legislation. Numerous acts authorized the trustees of particular townships to rent lands on special terms, for periods varying from ten to ninety-nine years, with and without provisions for revaluation, and always at a low rent. It is beyond doubt that these special laws were passed at the instance of interested parties, sometimes even of members of the Legislature themselves,[4] who desired to obtain lands on better terms than those offered by the general law. It is equally certain that in most instances the lessees and

[1] 27 Ohio Laws, 51.

[2] In 1838 they were considered worth nine dollars per acre.—Report Supt. of Common Schools, 1838, 36.

[3] 14 Ohio Laws, 418.

[4] "Members of the Legislature not unfrequently got acts passed and leases granted either to themselves, to their relatives, or to their warm partisans. One senator contrived to get by such acts seven entire sections of land either into his own or his children's possession!!"—Atwater, 253. This book is valuable, but many statements, except where based on indubitable evidence, are to be received with caution.

not the schools derived the benefit from this special legislation.[1]

In 1817, the General Assembly, following the wise plan adopted in the previous year for the Virginia Military lands, authorized the proper officials to appraise the sixteenth sections still unleased and to lease them for ninety-nine years at a rent of six per cent. of the valuation, subject to revaluation every thirty-three years. Any section not rented at the appraised value within a year was to be leased to the highest bidder. The law applied also, with a change of executory officers, to the lands of the United States Military District.[2] As amended in 1821 no land was to be leased which had been valued at less than one dollar (!) per acre.[3]

Still the revenue applicable to schools continued so small, that by 1820 a general conviction prevailed that something was wrong. Many lands had been leased, yet the schools were deriving little from them. Few as yet perceived the true causes of the trouble. Even the Governor failed to locate the prime cause, though he was of the opinion that low rents might be in a measure responsible for the small net income arising![4] The Legislature if they saw any waste in the fund did not attribute it to low rents, for in the face of the Governor's suggestion they authorized the cancellation of leases on the ground that the lessees were "laboring under great embarrassment in consequence of the present reduced

[1] "The school lands have been in many instances leased out for different periods of time to persons who in numerous instances seem to have forgotten that these lands were given to the State for the support of education and for the benefit of the rising generation. . . . Shall we proceed on, legislating session after session for the sole benefit of the lessees of school lands at the expense of the State?"—From a report made to the Ohio House of Representatives in 1821. *Apud* Atwater, 257, 258.

[2] 15 Ohio Laws, 202. [3] 19 Ohio Laws, 161.

[4] "So far as my information extends, the appropriation of the school lands in this State has produced hitherto (with few exceptions) no very material advantage in the dissemination of instruction—none commensurate with their presumable value. Whether this be owing to the comparatively new state of the country and the low rate of rents; whether the property have been let too low on durable leases at unpropitious periods; or whether the fault be attributable to an injudicious application of the funds, or expense of management, is difficult to decide."—19 House Jour., 18.

price of agricultural produce and the high rents they are compelled to pay." [1]

One great cause of the existing state of affairs was too much legislation.[2] A few general laws, well enforced, might have brought to the schools a moderate income. The numerous special enactments resulted in a state of chaos, in the midst of which designing speculators reaped a harvest at the expense of the educational funds. This idea at last found voice in the General Assembly. In December, 1821, a committee on schools and school lands was appointed in the Ohio House of Representatives. They seem to have studied the problem with great care. In their report they reviewed the whole history of the school lands, and showed the evils resulting from the multitude of ill-advised, special laws.[3] This special legislation they rightly attributed to the importunity of actual or would-be lessees. Hence they inferred that the system was at fault, and that by abandoning it all incentives to special legislation would be removed and the past errors would not be repeated. To consider special legislation a peculiar attribute of the tenant system was manifestly an indefensible position. The experience of all States shows it to be an evil which, unless absolutely forbidden to the Legislature, will appear at any time and in all matters which can be made the subject of legislation. But so overpowered were the members of the committee by the existing ills that they advocated selling the lands in order to

[1] 19 Ohio Laws, 75. A still more striking case was an act authorizing the trustees of any township in Fairfield County to relinquish "any part not exceeding one half of the yearly rent or interest" on any lot therein, for two years.—19 Ohio Laws, 144.

[2] "From 1803 to 1820 our General Assembly spent its sessions mostly in passing laws relating to these lands, in amending our militia laws, and in revising those relating to justices' courts. Every four or five years all the laws were amended, or, as one member of the Assembly well remarked in his place, 'were made worse.' . . . The laws were changed so frequently that none but the passers of them, for whose benefit they were generally made, knew what laws really were in force. New laws were often made as soon as old ones took effect."—Atwater, 253. This almost contemporaneous account, while highly colored, is in a great measure verified by the official records of laws adopted.

[3] I have been unable to find an official copy of the report in Columbus or elsewhere. It is, however, given in full in Atwater, 257 *et seq.*

avoid all future temptation to yield to the petitions of interested lessees.[1]

In view of the opinions presented in this report a special commission was appointed to investigate the subject and consider the needed changes in legislation. Their report was made to the next Legislature,[2] and a committee of the Senate in 1823, "availing themselves of the report," made a long series of charges against the existing system of managing the lands. They showed that frauds had been practised in the appraisals; that the lands had been systematically undervalued by the administrative officers of the townships, and that the proceeds in many townships had been lost and squandered. These evils they attributed to the lack of proper checks upon the local officers, and to the absence of any general superintending authority.[3] The committee assumed that these faults could not be corrected in the future so

[1] "The committee are impressed with the belief that unless these lands are soon sold and the proceeds invested . . . in some productive stock, no good and much evil will accrue to the State from the grant of these lands by Congress. . . . Shall we proceed on, legislating session after session for the sole benefit of the lessees of the school lands at the expense of the State? or shall we apply to the general government for authority to sell out these lands as fast as the leases expire or are forfeited by the lessees? or shall we entirely surrender these lands to present occupants with a view to avoid in future the perpetual importunity of these troublesome petitioners?"—*Apud* Atwater, 257, 258.

[2] Of this report I have been unable to find a copy. Its conclusions are embodied in the report next considered.

[3] "During almost all previous legislation a local policy has prevailed . . . but on a full examination of the subject, it is their [the committee's] opinion that the interests of education require a change of policy. They are the more confirmed in this opinion as, by correct information received from various quarters, impositions and frauds have been practised, by which means the produce of the school lands in many places has been reduced to comparatively nothing. . . . The sections number sixteen being . . . distinct and independent of each other, without (by legal provision) any possible superintendence of the Legislature, or any person exercising authority under them, to detect fraud or correct abuses, produce necessarily an endless diversity in their management and faithful application of their proceeds; indeed, so much so that the opinion is becoming too prevalent that they are a proper subject of speculation. So great have been the impositions practised in this respect that in many places valuable lands have been appraised at the nominal sum of twelve and one-half and twenty-five cents per acre, as your committee are informed."—21 Senate Journal, 132–134.

long as the lands were subject to leases. Discouraged by the picture of ruin presented to their eyes, they recommended an abandonment of the system of leasing, and urged that the remaining lands be sold in fee, as soon as it became certain that the State had the authority for such a step. Pending the confirmation by Congress of this power to sell, they recommended that all laws authorizing permanent leases be suspended, that any lessee be permitted to surrender his holding, and that thereafter the lands be leased simply from year to year. These last recommendations were adopted by the Legislature,[1] though it must have been evident that only those tenants who had made poor bargains, and few had, would surrender their leases. Had this step been followed up by the establishment of proper checks against fraud and abuse by local officers it would have been easy to render the remainder of the lands productive of a moderate rent until the day arrived when, because of the need for more schools, it would have been wise, and from the settlement of the region possible, to sell the lands at fair prices. The next Legislature began to undo the work of its predecessor by enacting that sections sixteen might be subdivided and leased for fifteen years without previous appraisal.[2]

The friends of the schools now awakened, and the next elections brought into the Legislature men who were determined to see the end of this unfortunate chapter. They called upon the county treasurers in the United States Military District to make a report and transmit all school moneys to the State treasury.[3] More important still, they required each county assessor to make a list during the following year of all the school lands in his county, the number of acres, the names of lessees, terms of the leases, and a true valuation of the lands, which, together with other information, was to be forwarded to the State Auditor.[4] In the following year all subsequent leases of township school lands were again limited to one year.[5]

[1] 21 Ohio Laws, 33. [2] 22 Ohio Laws, 418. [3] 23 Ohio Laws, Local, 115.

[4] 23 Ohio Laws, Local, 114. This appears to have been the first attempt made by the State to find out exactly the condition of the trust.

[5] 24 Ohio Laws, 63.

But the doom of the tenant system in Ohio had been pronounced. The dissatisfaction with the existing condition of affairs had culminated in the report of 1823 already referred to. The suggestions there made had taken root. To avoid further development of evils which successive Legislatures by ill-advised and local legislation had engrafted upon the tenant system, not simply the vicious exotic growths were to be pruned away, but the whole system was to be extirpated, root and branch. As it was doubtful whether the State had the power to sell the lands, the General Assembly of 1824 framed a memorial to Congress praying for the passage of a law confirming this authority in the State.[1] In this paper all the possible disadvantages of the tenant system were set forth in the strongest colors. Imaginary and actual evils were blended in a curious combination. Few serious objections were raised which a wiser course of legislation might not have avoided in the past or removed for the future. The Legislature was, however, so determined on its object that they did not doubt that "these evils are such as cannot be remedied by any course of legislation whatever, if the State have not the power under the terms of the original grant of disposing of these lands in fee."[2] In 1826 Congress passed the desired legislation. The State was authorized to sell the lands and invest the proceeds in productive funds. No land could be sold without the consent of the township or district for whose benefit it had originally been given, while in apportioning the income of the fund each township and district was to receive that arising from the proceeds of its own school lands.[3]

Sanguine in the belief that at last the schools were to reap the full benefit of the munificence of Congress, the Legislature set about its new task. During the session of 1827 laws were passed looking towards the immediate sale of

[1] State Papers, 4 Public Lands, 47.

[2] This memorial contains a strong plea against the policy of leasing *in perpetuo*. Its arguments lack force when the system is adopted merely as a temporary measure to be abandoned when the value of the land shall have reached a point where further appreciation will be slow.

[3] 4 U. S. Stat., 138.

all the school lands in the State, except those belonging to the Connecticut Western Reserve. It was ordered that during the following year a vote of the inhabitants of each original surveyed township be taken on the question of selling the sixteenth section therein. The result of the vote was to be reported to the State Auditor.[1] In any township where no vote was taken or the result was unfavorable to the sale, a vote might be taken in any subsequent year on petition of a certain number of voters. Where the vote was in favor of the sale, the county assessor was to appraise with the improvements each parcel of land in the section, which was unleased or on which the lease expired within one year. On a date fixed by the Legislature, the land was to be sold at public auction, at a price not less than the assessor's valuation. Any not sold at the auction was to be disposed of at private sale. All moneys were to be paid to the county treasurer, and by him to the State Treasurer, separate accounts being kept with each township. This law was supplemented by an act "to establish a fund for the support of common schools,"[2] which required the State Auditor to keep a separate account with each township and district, of the proceeds of school lands therein. The faith of the State was pledged to preserve the funds and pay six per cent. interest thereon, to be distributed annually among the different school districts in each township in proportion to the number of families.

Separate laws were adopted providing for similar votes of the electors of the United States Military District, and of the Virginia Military Reservation.[3] In both districts the result was in favor of selling,[4] and the next Legislature prescribed terms of sale, essentially the same as for township lands.[5] In both cases the proceeds of the sales were to be passed into the State treasury, and six per cent. interest paid by the State to the districts for application to school expenses.

These provisions for sales could apply only to such lands as were not under permanent lease. The Legislature, how-

[1] 25 Ohio Laws, 56.
[2] 25 Ohio Laws, 78.
[3] 25 Ohio Laws, 103; *ibid.*, Local, 45.
[4] Education in Ohio, 24.
[5] 26 Ohio Laws, 23, 61.

ever, appeared to deem it necessary that lessees should have an opportunity to purchase their holdings, even though no advantage could accrue to the State by changing leases into deeds. Where a tract was rented permanently, the lessee was permitted to surrender his lease and to take a deed in fee on the payment of the last appraised value of his lands.[1] The folly of such an arrangement is amazing. To permit a holder to purchase his lands at a value put upon them from three to fifteen years before, was to give him the benefit of all appreciation in value since then. Most of the permanent leases required a revaluation, either in twenty or in thirty-three years from their date. The lessee should have been permitted to acquire the title in fee only upon the basis of that revaluation, or if he preferred not to wait, he should have been made to pay the full value at the date of purchase, as determined by a special appraisal. Under the law adopted many lessees availed themselves of the opportunity to purchase the property they had leased.

The effect of the provision for the surrender of leases was precisely what ought to have been foreseen, that the best leased lands were purchased at prices far below their true worth. The entire advantage promised by the revaluation clauses in the leases was lost at once, and the hopes and anticipations of a large increase in the fund were wrecked forever.[2] In 1838, upon the urgent recommendation of the Superintendent of Common Schools, an officer then known

[1] 25 Ohio Laws, 56, 103; 26 Ohio Laws, 23. This provision was by subsequent enactments made even more advantageous to the lessee. See 26 Ohio Laws, 10; 27 Ohio Laws, 40.

[2] "By the operation of this law the tenant may surrender his lease, and on paying the former assessment take a deed in fee-simple for land sometimes worth six times as much as he pays. Cases have come to my knowledge where land has thus been taken at six dollars per acre, worth, at the time, fifty dollars. Thus the township, which was in fact well provided with school lands, is deprived of almost the whole value by a law which can in no case operate for their benefit, but always against them. None but good lands are taken on those leases, and they are not surrendered unless they have greatly increased in value; the tenants, to be sure, make their fortunes, but the schools are sacrificed. The whole loss cannot be estimated now, though it must be immense—in some single townships more than fifteen thousand dollars."—2 Legislative Documents, 1838, No. 17, 41.

for the first time in Ohio, the Legislature repealed all laws authorizing the surrender of leases of section sixteen,[1] but did not change the provisions for the military reservations. The following year a law was enacted, which, if leases were to be surrendered at all, should have been enacted in 1827. Leaseholders at ninety-nine years were given one year in which to give up their leases, and were permitted to take a deed in fee at a valuation to be made at the time of surrender by three disinterested freeholders under oath. [2]

Some of the townships had voted not to sell their school lands, and in 1831 an act was passed permitting them to lease all unimproved lots for seven years, "for making such improvements as the trustees may think advisable," and all improved lots for three years, the rent to be paid in money.[3] This was a return to the policy laid down in the laws of 1803 and 1805. All moneys from leases were paid to the township treasurer and by him distributed to the school districts. This policy has obtained from then until now, and the rent from leased lands does not go into the State treasury.

In 1840, through the investigations of the Superintendent and the Auditor, several cases of loss and embezzlement in past years by county and township treasurers were unearthed and reported to the General Assembly. Hitherto there had been no officer, and hardly a provision of law, to render such acts by the local authorities difficult or hazardous undertakings. Now, however, a more strict method of accounting was provided.[4] The Auditor also instituted suits against the defaulting officials. Several of these cases were pushed to their termination, when the ardor of the prosecutor was cooled on finding that some of the defaulting treasurers were

[1] 36 Ohio Laws, 63.

[2] 37 Ohio Laws, 78. The period during which leases might be surrendered was several times extended.

[3] 29 Ohio Laws, 493. A proviso in the act required that in any township which had voted to sell its lands, no lease was to be given for a period longer than one year pending the sale. This was repealed in 1840, thus permitting leases as in cases where it had not been decided to sell.—38 Ohio Laws, 58.

[4] 38 Ohio Laws, 61, 62; 41 Ohio Laws, 62.

appealing to the Legislature for relief from the repayment of what they had misused. In some instances the Legislature actually passed bills of relief, and the fortunate officials were not compelled to restore the deficits. These proceedings discouraged the Auditor, and several pending suits were dropped.[1]

In 1843 a law was passed [2] revising the whole subject of the sale of section sixteen. The essential changes were that if the vote on the question of selling was favorable, the Court of Common Pleas was to appoint appraisers, who were to be non-residents of the township, to value the lands under oath. If their proceedings appeared fair to the court, the Auditor was, after due notice, to sell the lands to the highest bidder above the appraised value. A holder of a permanent lease wishing to surrender it must petition the Court of Common Pleas for permission, and if every thing appeared fair, he was to have a deed on paying the appraised valuation. By a law of the following year,[3] no holder of a permanent lease was permitted to surrender it except by a vote of the township. In 1845 five dollars per acre was fixed as the minimum price of all school lands. Thereafter no land was to be appraised at less than this, nor sold at less than the appraised value.[4] In 1852 all former laws relating to section sixteen were repealed, and a new law was enacted embodying all the later provisions with a few additions.[5] So few school lands then remained unsold that the provisions of the late laws could be of little service. In 1873 a general school law was passed containing the embodiment of all that was good in the immense mass of previous

[1] In his report for 1843 he says: "There seems to be no end to the plunder upon this fund. The multiplicity of these details has in no wise wearied me, but I confess that I have felt my energies relaxed by the facility with which 'relief bills' have been gotten up, and so often succeeded in the General Assembly. This fund has been most sadly and signally mismanaged from the beginning. The lands have been squandered and the fund has been plundered until it is now merely nominal in character. If sympathy for defaulters is to succeed to the wrong they have done, it is useless for a single officer to stand in the breach."—42 Ohio Laws, 19.

[2] 41 Ohio Laws, 20.

[3] 42 Ohio Laws, 43.

[4] 43 Ohio Laws, 58.

[5] 50 Ohio Laws, 168.

legislation.[1] Like that of 1852, it is substantially a repetition of the enactments of 1843, 1844, and 1845.

The school lands of the Connecticut Western Reserve, thus far unnoticed, now demand attention. For some fortunate reason, probably because the district was sparsely settled, the Legislature did not touch them during the troublesome era of lease legislation. Some of them had been leased for limited periods under the law of 1803. No perpetual leases had been given. The lands were thus entirely within the control of the district, when the policy of sales was entered upon by the State.[2] In 1828 the Legislature authorized the people to vote on the question of selling the lands.[3] The vote was not taken as provided, and the General Assembly then ordered it taken in October, 1830.[4] The inhabitants voted to sell, and in 1831 provision was made for the appraisal and sale of the lands, on terms easy for the purchaser and advantageous to the district.[5] All proceeds were to be paid into the State treasury. In 1833 it was ordered that these proceeds should be funded annually until the first of January, 1836, and that thereafter the income should be distributed annually to the public schools in the district.[6] The lands were soon sold and the final payments were made in 1837.[7]

It has already been stated that a large part of the land in this Reserve was held by the Indians when Ohio became a State, for which no school reservations were made by Congress until 1834.[8] This additional grant was about two thirds the size of the first. In 1835 the question of selling was submitted to vote.[9] The people decided that the wiser policy was to hold the lands until the country was more thickly populated, when they would be more valuable, and the need for schools more pressing. The lands were accordingly leased on short leases. In 1848 the question was

[1] 70 Ohio Laws, 230–238.

[2] After 1822 no new lease was to run beyond January 1, 1826.—20 Ohio Laws, Local, 34.

[3] 26 Ohio Laws, Local, 135.

[4] 28 Ohio Laws, 18.

[5] 29 Ohio Laws, Local, 90.

[6] 31 Ohio Laws, 24.

[7] Education in Ohio, 28.

[8] *Supra*, 33.

[9] 33 Ohio Laws, Local, 128.

again submitted, and the sale was ordered.[1] They were offered on the same terms as the first instalment, and were soon sold. The final payments were made in 1858.[2] The management of these lands was in accordance with what would seem the true policy to be observed in the disposition of school lands. Still it is probable that they were sold too soon. The average price received per acre was but two dollars and seventy-four cents. Had they been held a few years longer they could probably have been sold for from five to ten dollars per acre.

Of the school lands in the State, those belonging to the United States Military District and the Connecticut Reserve have all been sold. Of those belonging to the Virginia Military Reservation, all have been sold except about ten thousand acres, which are under perpetual lease. Over seven eighths of the sixteenth sections have been sold, but it is not possible to ascertain the exact figures, nor to know how much of the remainder is under perpetual lease.[3]

Since 1827, when the first laws concerning the sale of school lands were enacted, the money arising from the sales has been paid into the State treasury. In the early days the State borrowed these funds, from year to year, by special acts, paying six per cent. interest for their use.[4] In 1830 it was provided that all moneys thereafter coming into the treasury from these sales should be loaned to the State at six per cent., to be used for building canals, and when those were finished to be applied to the sinking fund.[5] From that time all such moneys have been borrowed by the State for its various needs, and the proceeds of the school lands exist only in the form of an irreducible State debt, on which the State pays interest to the school fund for distribution under the law, "and the faith of the State of Ohio is pledged for the annual payment" of the same.[6]

[1] 46 Ohio Laws, 38. [2] Education in Ohio, 28. [3] Education in Ohio, 29.
[4] See, for instance, 26 Ohio Laws, 73. [5] 28 Ohio Laws, 56.
[6] "The principal of all funds arising from the sale or other disposition of lands or other property granted or intrusted to this State for educational and religious purposes, shall forever be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations."—Const. 1851, Art. VI., Sec. 1.

Under the terms of the original grants by Congress it is required that each township or district shall receive the proceeds of its own lands. This has necessitated the keeping of accounts with each separate township or district, and on the books of the State Auditor are eight hundred and twenty-three distinct funds held in trust for the benefit of common schools.[1] These funds, owing to obvious causes, vary in amount. While some townships receive a good income, others, through the waste of their lands, have but a small fund and a slight income. The evil effects of this are obviated by a common school fund raised by State taxation, and annually distributed in such a way as to nearly equalize, according to population, the income of the different school districts.[2]

The salt lands, which were given to the State for educational purposes in 1824,[3] were ordered sold at public auction.[4] In 1827 a common school fund was established, to belong in common to the people of the whole State, consisting of the proceeds of these lands, together with such legacies and donations as might be made.[5] Interest was to be paid by the State, and to be funded annually until January, 1832. In 1831 the period during which the interest was to be funded was extended until the first of January, 1835,[6] after which all subsequent interest accruing was to be divided among the counties in proportion to the number of white male inhabitants. From 1835 until 1845 the annual distribution of interest was made. In the latter year, without any authority from the Legislature, the State officials ceased paying and distributing the interest. This condition of affairs continued unnoticed, or at least undisturbed, until 1873, when the State was pledged by law to pay annually the interest arising from "the money paid into the treasury

[1] Education in Ohio, 31.

[2] The constitution of 1851 provides that "The General Assembly shall make such provisions, by taxation and otherwise, as with the interest arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State."—Art. VI., Sec. 2.

[3] *Supra*, 34.

[4] 24 Ohio Laws, 41.

[5] 25 Ohio Laws, 78.

[6] 29 Ohio Laws, 423.

from the sales" of these lands.[1] The intention of this law was to make the proceeds of the sales a permanent irreducible common school fund, with interest payable by the State in accordance with the original law of 1827.[2] So far as I can ascertain, it has never been carried into effect, and now, as during the period from 1845 to 1873, the schools receive no income from the proceeds of these lands, which the State has received and spent. The fund, amounting to $41,024.05, has disappeared from view, and the State officials seem unable to locate it.[3]

In 1851 the Legislature provided that the proceeds of the swamp lands[4] should be added to the school fund.[5] In 1853 the law was modified and provision made for reclaiming and draining the lands, "to be paid for in said lands." The remainder, after paying all expenses, were to be sold and the proceeds paid into the treasury for the use of common schools.[6] The interest was to be funded until 1855, and thereafter distributed. There were but 25,640 acres of the land, and nothing reached the treasury from the sales for many years. In 1874 a few sales were made, and since then about six thousand dollars has been paid in. According to a law passed in 1873 this money should form a part of the permanent common school fund with annual interest at six per cent., payable by the State,[7] but in reality it has been used for school expenses as fast as it has been paid in.[8]

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[1] 70 Ohio Laws, 195, Sec. 132. "The State is in truth bound to pay interest on the principal of the fund which [by the accumulation of interest?] is some thousands of dollars more than the proceeds of the sales."—Education in Ohio, 32.

[2] See Revised Stat., 1880, Sec. 3952.

[3] "*No such fund exists at present.* The reports of the Auditor of State for 1870–71 show that the sum of $41,024.05 was credited to the 'salt'-land fund. No interest was paid on this fund, and the reports fail to show how it was distributed, though our predecessors inform us it was disbursed with the common school fund."(!)—Extract from a letter of the Auditor of State, dated May 19, 1884.

[4] *Supra*, 20 *et seq.*

[5] 49 Ohio Laws, 40.

[6] 51 Ohio Laws, 357.

[7] Revised Stat., 1880, Sec. 3952.

[8] "About $6,000 has been paid in on the 'swamp' lands and distributed with the common school fund."—Extract from letter of Auditor of State, May 19, 1884.

Such is the history of the management of the school lands in the State of Ohio. That the possibilities of the grant have not been realized is acknowledged and regretted by all. In the preceding pages some of the causes for this failure have been indicated. Others remain to be noticed. The great underlying cause was one by no means peculiar to Ohio or to the times—the failure to appreciate the responsibility imposed upon the State in guarding this immense trust. To this was added a lukewarmness in many parts of the State on the subject of common schools. These two facts produced a general carelessness in legislation on school matters.[1] Further, nearly every change made in the laws was of necessity an experiment. If her errors were more numerous than those of her sister States, some of them must be attributed to this circumstance.

It seems undeniable that many of her lands were forced into market in advance of any call for their sale. They were leased or sold in districts thinly settled and where prudence would have urged delay. True, they were not sold except by vote of the inhabitants of the township or district, but where any other local interests would be benefited by sales the people were apt to ignore the effect on the school fund. So long as the State was the guardian of the property, she ought not to have sanctioned proceedings which sold lands for five, ten, or twenty per cent. of what might have been realized.[2]

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[1] Governor Lucas said in 1832: "Never until the session of 1824–5 could the Legislature be brought to give their assent to the passage of a bill to regulate common schools. The first act met with serious opposition in some parts of the State, and petitions were presented for its repeal. . . . But I trust the time is not far distant when public opinion will be concentrated in favor of supplying the means of instruction. All that is wanted is to have public opinion in its favor."—31 House Journal, 54. In 1827 the Governor in his message says: "That our energies and resources have been and are directed to other objects, while the cause of education has been neglected or feebly supported, is obvious to all."—26 Senate Journal, 11.

[2] "It is not uncommon to find land sold for fifty, forty, thirty, twenty, ten, and in one case even as low as five cents per acre. Men have become purchasers of whole sections for a mere trifle, and that sometimes where it only required a few years to have realized five, ten, fifteen, or twenty dollars per acre. And let it be borne in mind that in most cases where school lands have been

In 1837 a State Superintendent of Common Schools was appointed. His investigations soon showed that such an officer had been needed in years past to enforce the proper execution of the laws and to advise regarding necessary legislation. Among his first labors was the examination of the condition of the school lands and funds. In the course of this work, he brought to light many evils and much obliquity on the part of local officials. Whether because he had probed too deeply into past transactions and spoken too plainly of past errors, or for other reasons, the office was abolished in three or four years, and its duties added to those of the Secretary of State. His labors bore fruit, however, in more carefully devised and better executed laws.

One of the most serious charges brought by the Superintendent was, that special legislation had seriously interfered with the workings of the general laws, as well after as before the policy of sales had been adopted, and always to the disadvantage of the trust fund. The State Auditor also devoted attention to the subject, and in his conclusions coincided with the views of the Superintendent. "A most serious evil," he says, "to the portion of the community interested therein, has grown out of the loose character of our legislation upon the subject of school and ministerial leased lands."[1] It seems clear that had the general laws, bad though many of them were, been permitted full execution, much that was ill would have been avoided.[2]

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sold at two, three, five, or even ten dollars per acre, the public has lost a hundred per cent. by pressing the sale too early."—Report of Supt. of Common Schools, 1839, 58.

[1] Auditor's Report, 1839, 20, printed in 38 Ohio Laws.

[2] "The evil perhaps cannot be better portrayed than by citing a single case. . . . Fractional section 29 in the 4th township, fractional range in Hamilton County, was originally leased as other lands. On the 29th of January, 1821, a special act was passed by the Legislature, by which the trustees were 'authorized and empowered, with the consent of the present lessee, to re-lease the same *upon any terms* which in their opinion would best secure the interests of the township.' Under this broad power a new lease was given to the lessee, subject to a rent of forty dollars per annum, and *dispensing with all future revaluations*. The tract lies immediately . . . adjoining the city of Cincinnati. It is still held under the lease of forty dollars per annum, and at this day [1839] is estimated to be worth not less than *one hundred thousand dollars*. . . . This is an

The abolition of the leasing system had not done away with special legislation. As before, acts affecting individual townships or particular lands were passed on the petition of parties interested in obtaining special privileges. All kinds of special and local legislation were enacted.[1] The difficulties in resisting these petitions were great, but had the interests of the cause of education lain closer to the hearts of the people and legislators, successful resistance could have been made.[2] The Auditor pleaded for a radical change. "Much waste," he says, "has been committed, and much wrong has been done; but if special legislation can be avoided for the future, if our present laws can remain in force, if salutary provisions can be observed for a correct appraisement before sales, and a strict system of accountability be persevered in, the remnant of our lands may be made a valuable inheritance to those of our people who have re-

isolated case, but there are hundreds in existence in our religious, and, what is equally important, in our school lands, where, in the looseness and inadvertence of special legislation, the revaluation clauses have been repealed, and the causes of religion and education deprived of the benevolent grants for their support."—*Ibid.*, 20. Again he says: "In addition to the instances before given of the repeal of revaluation clauses, there are special acts granting privileges to surrender leases at old, and consequently low, valuations—acts authorizing sales without sufficient guards as to appraisement, and last, though not least, special laws changing in particular cases the modes of sale from those adopted in the general law on the subject."—*Ibid.*, 32.

[1] "Ohio has perhaps more than any other State suffered from the over-abundance of private legislation, of charter-mongering, contract-letting, and debt-creating. Corruption has, through unstable and hasty legislation, burdened the people with debts and taxation to a deplorable extent. No State has greater reason than Ohio to complain of the iniquity of the lobby. For years the business of lobbying for counties and towns and city charters was a lucrative one, and private emolument has been the basis of five sixths of the legislation in Ohio, as well as of other States. . . . The State Legislature has come to be regarded more as the means of exacting something from the public, than as the meeting of the delegates of the people assembled to transact public business under written instructions. Surely these evils are to be removed, and they may easily be done away with by general laws."—Democratic Review, March, 1847, 202.

[2] "I can refer to my own experience for evidence of the honest zeal with which legislators often strive to gratify their constituency in the passage of special acts where individual interest conflicts with public advantage."—Auditor's Report, 1839, 32.

tained them from the common sacrifice."[1] The blame was due not only to the Legislature, but to the people who had permitted—nay, sought—much of this disastrous local legislation.[2] But all eyes were finally opened by the efforts of the Auditor and others, and the worst evils were soon corrected. Had the awakening come a few years earlier, the people of Ohio would have less to regret in the management of their school lands.

(*b*) INDIANA.

The territorial Legislature of Indiana exercised a more immediate control over the lands reserved for schools than did the territorial authorities of Ohio. In 1808, four years after the lands were reserved, the Courts of Common Pleas in the various counties were authorized to lease school sections during the ensuing year, on improvement leases, for not more than five years, the lessee to clear at least ten acres for each quarter section held by him.[3] Two years later, the same courts were empowered to lease the lands under such restrictions as seemed best to them. No lessee was to have more than one quarter section. The proceeds were to be applied by the courts "to the support of common schools according to the true intent of the Act of Congress."[4] Here, then, six years before the lands had actually been granted and Indiana had become a State, was a law looking to the establishment of a revenue for the schools. Without discussion, the plan of leasing had been adopted. The law unfortunately left the period of the leases subject to the discretion of the Court of Common Pleas.

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[1] Auditor's Report, 1840, 32.

[2] "If these existing evils are beyond remedy, if it be that . . . special legislation—that bane of all governments—has walled these injuries about so well with *vested rights* that no virtue but endurance is left, it will form another of the deep-seated evils—the strangely infatuated waste of property that has marked the disposition—nay, almost destruction—of the benevolent grants of Congress for religious and school purposes, and which, now looked upon, cause every good heart to beat with pain, not at the improvident, unjust range of special legislation, but the heartlessness of individual avarice and cupidity which has thus rioted upon the invaluable inheritance of posterity."—Auditor's Report, 1839, 20.

[3] Territorial Laws, 1808, 36.

[4] Territorial Laws, 1810, 46.

It has already been seen that when Indiana was admitted as a State the school lands were given not to the State but to "the inhabitants of the township." The Legislature could, therefore, exercise no immediate control over the funds, and could merely lay down general rules for the guidance of the local authorities in managing the trust. The constitution adopted by the State provided that no school lands should be sold before the year 1820.[1] The first session of the State Legislature authorized[2] the appointment of a superintendent in each township to manage section sixteen. He was empowered to rent unleased lands, "to the best advantage, for not more than seven years." Cleared land was, however, to be leased for only three years.[3]

In 1821, a special committee of the State Senate was appointed to investigate the condition of the school lands, and to report the best plan in its opinion for deriving a revenue from them. The report of this committee discussed the relative advantages of cash sales, credit sales, and permanent leases, and after a careful presentation of the arguments in favor of each, held that a system of cash sales with the proceeds immediately funded was the best permanent policy.[4] The arguments against leases were drawn from the experience of Ohio and other States.[5] To the conclusions of the committee no valid objections exist, provided the lands are not forced upon the market at too early a day. This report produced no immediate change in the policy already adopted.

The next step carried the Legislature away from solid ground. The same lack of coincidence between the boun-

[1] Constitution, 1816, Art. IX., Sec. 1.

[2] Indiana Laws, 1817, 104.

[3] The lessee was to set out fifty fruit-trees each year, for which a deduction was to be made from the rent. The superintendent had full power to prevent trespass and waste upon the lands. In 1818, the period of these leases was changed from seven to nine years.—Indiana Laws, 1818, 301.

[4] Senate Jour., 1821–22, Appendix.

[5] "The system has been adopted in many parts of the United States . . . of leasing the lands either permanently or for a life or lives. But the same beneficial results have not been here as in Europe."

daries of the surveyed or congressional townships and the civil townships existed in Indiana as in Ohio, and in 1824 a law was passed to incorporate the congressional townships for the purpose of creating a controlling power over section sixteen. Trustees elected in each township were to have control of the school lands therein, and "to dispose of them in such manner as is for the best interest of the schools," but no sale in fee was to be made.[1] Every guard against a waste of the grant was thrown down by this law. Here was authority given to lease the lands on any terms for any length of time, with no saving clause except that the lease, like all others, might be cancelled if the lessee failed to keep his part of the contract. Truly, this was a method of dissipating the grant, easier and simpler than the Ohio plan of numerous and complicated special laws. As the ideas of the trustees of the various townships differed on the value and importance of the grant, uniformity in the leases was not to be expected under this arrangement. Probably few of the trustees had ever given any thought to the subject, and when they were invested with full power over the lands, it is little wonder that the terms of some leases were absurd and improvident.[2] It required but one year to satisfy the Legislature of the improvidence of this measure. In 1825 the law was amended, so that leases could not thereafter be given for more than ten years, while in all other regards the terms were still left to the judgment of the trustees.[3] It soon became apparent that the funds were suffering vast waste and loss in many townships. The people saw that too much responsibility was thrown upon the local trustees, many of whom were not qualified for the position. The unfortunate terms of the grant, by which each township was made the owner and manager of its section sixteen, made the evil in a degree unavoidable. But the Legislature should

[1] Indiana Laws, 1824, 379.

[2] The effect of this law and of the similar territorial law of 1810 was shown by Governor Ray, in his message of 1826, where he says: "There are already leases given in this State on these lands for almost every term from five to ninety-nine years."—Senate Journal, 1826, 33.

[3] Indiana Laws, 1825, 93.

have adopted more stringent regulations, leaving as little to the judgment of the trustees and the township as was compatible with the conditions of the grant. A uniform system of leases for the whole State would have preserved the lands in better shape, until the proper moment came for selling them.[1] The failure to provide such a system from 1810 to 1826 gave opportunity for irregular and unwise acts of trustees by which many township funds suffered irreparable damage.

Causes were now at work which turned legislation in another direction. The petition of Ohio for power to sell her school lands, the favorable answer of Congress in 1826, and the growing conviction that, for Indiana, owing to the peculiar conditions under which the school lands were held, the system of leasing was a disadvantageous one, drew attention to the policy of selling. In 1827 the Legislature asked Congress for authority to order sales.[2] Congress, in 1828,[3] granted the power with the same restrictions and limitations that had been imposed upon Ohio.[4]

At the next session of the Legislature provision was made for obtaining a vote of each township on the question of selling its lands, and for reporting the same to the General Assembly.[5] Where the townships voted to sell, the trustees were to place a minimum value of not less than $1.25 per acre, on each parcel of land. The county commissioner of school lands was then to sell them at public auction. Any leased lands might, with the concurrence of the lessee, be sold subject to the lease, or the lease might be

[1] "That section of land in each congressional township for the use of common schools," said Governor Ray, in 1826, "requires your particular notice. The laws regulating these lands are susceptible of improvement. Something should be done to prevent the commission of waste of them. What strikes me as most likely to succeed under the present mode of disposing of them, is to give long leases for a certain and determinate term of years on a yearly ground-rent, and to subject trespassers to an indictment in the Circuit Court. . . . *Whatever plan you may devise let it have uniformity in view.*"—Senate Journal, 1826, 33.

[2] Joint Resolution, January 25, 1827. Indiana Laws, 1827, 103. State Papers, 4 Public Lands, 957.

[3] 4 U. S. Stat., 298.

[4] *Supra*, 52. The act was a literal copy *mutatis mutandis* of the one authorizing sales in Ohio.

[5] Indiana Laws, 1828, 112.

cancelled.[1] This law, modelled upon those of Ohio, was an improvement upon the latter in two particulars. By fixing a minimum value, no lands could be sold at such prices as ten, twenty, or thirty cents per acre, as had happened in Ohio. Neither could lessees here purchase their holdings at a valuation made years before, when they first obtained their leases. Any one who purchased, even though he were a former tenant, must purchase at public auction at a price not below that set by the trustees. Where the township voted not to sell, or where for want of bidders no sale was made, the township trustees were to lease the lands for any term not exceeding ten years.[2]

Another feature of the Indiana system grew out of the terms of the original grant. In Ohio the State controlled the funds arising from the sale. In Indiana, on the other hand, the Legislature did not assume the immediate and direct handling of the funds, but, leaving them with the county commissioners, contented itself with directing in a general way how the moneys should be invested. By the law of 1829 the county commissioners were instructed to loan the proceeds of the sales on real-estate mortgages bearing six per cent. interest and running not more than three years.[3] In 1831 occurred a general revision of the laws of the State, and a few changes were made in the provisions touching school lands. The most important was the establishment of a State loan-office, and the provision that any funds arising from the sales should either be deposited in this office or loaned by the county commissioner on mortgage, as the township might order by vote. If deposited in the loan-office, the State guaranteed the payment of six per cent. interest.[4] Where money was loaned on mortgage by the county commissioner only three hundred dollars could be loaned to any borrower.

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[1] Indiana Laws, 1829, 120.

[2] This limit was reduced to eight years in 1831. Since 1830 the consent of a majority of all legal voters in the township has been required to authorize a sale.—Indiana Laws, 1830, 150.

[3] Indiana Laws, 1829, 120.

[4] Revised Code, 1831, Chap. LXXXVI. Only three or four townships placed their funds in the hands of the State.

The habit seems to have obtained in Indiana of reënacting a whole law whenever it was desired to make an amendment to one or more sections of it. Accordingly in 1833, 1837, and 1841, complete laws were enacted concerning the school lands, which, save in a few minor particulars, were mere re-enactments of the revision of 1831.[1] The only important change was one made in 1833 reducing the limit of leases from eight to three years.

While these laws established all necessary safeguards for appraisement and sale of the lands, the provisions for the investment of the proceeds would impress a careful business man as likely to result in loss. Few capitalists would entrust to an irresponsible and untried agent the business of loaning their money on mortgages without more careful instructions and limitations than were imposed by these laws. The system of accounting—if, indeed, it may be called a system—consisted in reporting annually the amount on hand and amount loaned. Under these conditions it was natural that through ignorance or connivance some of the county commissioners should lend money on worthless securities, and that in a few instances portions of the funds were permanently borrowed by the commissioners without interest. A suspicion seems to have occurred in 1841 that the moneys were not carefully invested, and the reports of that year were examined more closely by the State authorities. The result is thus told by Governor Biggar: "The returns from a portion of the counties show their school funds to be well managed. In others they may be safe, but the accounts are in so much confusion that no correct opinion can be formed. In some cases the whole fund has been totally, irretrievably lost."[2] He intimated that a thorough investigation was necessary, in order to ascertain what was the actual condition of the funds, and what was needed to rescue them from the existing "chaos and confusion."[3]

[1] Indiana Laws, 1833, 83; 1837, 15; 1841, 51. [2] Senate Journal, 1843, 20.

[3] "The unofficial investigations already made show enough to establish the necessity of searching for funds which have been misapplied or apparently lost, and of tracing their history from the time they first came into the hands of the agents entrusted with their management."—*Ibid.*, 21.

Whether as the result of these disclosures or from other causes, all proceeds of sales were, in 1843, ordered to be paid over to the county treasurer and loaned by him. A more accurate and systematic method of book-keeping was inaugurated, and strict account was to be rendered annually of the state of the various township funds. This change resulted in a more safe and economical management and investment of the funds, and in the clearing up and straightening out of the tangled accounts of the commissioners. In the course of this work it was found that much money had been lost through poor and unwise loans.

For several years the State had been accumulating a fund for the support of common schools in addition to that derived from the township lands. This was drawn from such various sources, was intrusted to so many different officials, and invested in so many ways, that its management had caused much expense, while the money itself was not always secure from loss. In 1849 an attempt was made to simplify the system.[1] But the evil was of such magnitude[2] that the constitutional convention of 1851 sought to remove it by consolidating the various funds into one "common school fund." The fund was to be kept intact, and its income inviolably appropriated to the support of common schools.[3] The township lands and their proceeds were, by the new constitution, apparently made a part of this common school fund.

Tired of the continual losses and shrinkages occurring through the carelessness of the county officers, by whom certain of the funds were invested,[4] the framers of the con-

[1] Indiana Laws, 1849, 123.

[2] "The whole concern as it has been heretofore managed is . . . utterly odious in every respect. . . . The funds have been entrusted to the custody of an army of officers, whose fees and perquisites must necessarily consume a large part of the income of the various funds, if they be ever so well managed. . . . Our present system is extravagant and wasteful, the management of our school funds costing us annually one third as much as that of the State government." —Debates, Constitutional Convention of 1851, 1882, 1883.

[3] Constitution, 1851, Art. VIII., Sec. 2.

[4] "We have been the passive recipients of the bounty of the United States, and have, by our neglect and mismanagement, wasted thousands of dollars of the principal of this bounty."—Debates, Constitutional Convention, 1851.

stitution inserted a clause making each county responsible for the preservation of any school funds in its hands.[1] This provision, if enforced, would ensure the careful handling and investment of the principal of the school endowment.

In 1852 the Legislature, following, as they believed, the letter and spirit of the constitution, abolished the corporate existence of the congressional townships, and provided that the income of the whole school fund, including that derived from lands, should be distributed ratably among the counties for the support of schools according to the number of enrolled scholars.[2] This enactment was plainly inconsistent with the acts of Congress already cited,[3] by which the proceeds of each school section were secured to the inhabitants of the township in which it lay. Whatever may have been the general advantages of a uniformity of funds and income throughout the State, it was not to be expected that, in view of its legal rights, a township which had been so fortunate or wise as to derive a large fund from its lands, would consent to share the result of its care and thrift with some less prudent township. Accordingly one of the townships applied to the courts to enjoin the county officials from executing the law and diverting the income belonging to the township to the support of schools elsewhere. A temporary injunction was granted. The matter was then carried before the Supreme Court on appeal.

This trouble grieved the Superintendent of Public Instruction, who viewed it as an attempt to break down the school system established under the new constitution. He thought that the suit was prompted by motives of selfishness, and not because any injury or injustice resulted from the law.[4] He even entered into a useless argument to show that it could never have been the intention of Congress to make the grant in such form as to cause an inequality of funds, and hence of school facilities, in the different townships.[5] There can be no doubt that this inequality was an

[1] Constitution, Art. VIII., Sec. 6.
[2] Revised Statutes, 1852, chap. 98.
[3] *Supra*, 35, 67.
[4] Report Supt. of Public Instr., 1852.
[5] *Ibid.*, 1853, *passim*.

evil, but in order to remove it the State could not presume to violate the plain terms of the trust.

The Supreme Court, in the opinion rendered in the case,[1] reviewed the whole legislation of Congress and the State on the subject, and decided that the law of 1852, in so far as it subjected the proceeds of the school section to distribution outside the township in which it lay, was contrary to the terms of the grant and to the State constitution.[2] The injunction was therefore made perpetual.

In consequence of this decision the law was revised in 1855.[3] The income from the township lands and funds was secured to the townships as before, while the school moneys from all other sources were consolidated into the common school fund. A plan was devised whereby the income of this latter fund was so distributed that, taken in connection with the income from the lands, it made the school revenue of the townships nearly proportional to the number of school children in each.[4] In this way the former inequalities were avoided without violating the rights of the townships. According to this same law the township funds were thereafter to be loaned by the county treasurer on mortgages at seven per cent. The Superintendent of Public Instruction who, in 1852, had opposed this system of loans as liable, judging from past experience, to result in loss,[5] later became its advocate, believing that the constitutional provision making the counties responsible for all losses removed the objections to it.[6]

In 1865 a complete school law was enacted [7] whose provisions, so far as they pertain to the lands, are substantially like those in force to-day. By this law the proceeds of the lands are deposited with the county treasurer and by him loaned to individuals on mortgages at a rate of interest es-

[1] State *et al. vs.* Springfield Township, 6 Indiana Reports, 83.

[2] Art. VIII., Sec. 7, which had apparently been overlooked when the law of 1852 was passed, reads: "All trust funds held by the State shall remain inviolate, and be faithfully and exclusively applied to the purpose for which the trust was created."

[3] Indiana Laws, 1855, 161.

[4] *Ibid.*

[5] Report Supt. of Public Instr., 1852, 47.

[6] *Ibid.*, 1853.

[7] Indiana Laws, 1865, 37.

tablished by law.[1] The income is distributed annually to the proper township. Where the lands are not sold the township trustee may lease them for not more than seven years at a rent determined by the township meeting. This rent is paid by the trustee to the county treasurer, with whom it remains until the next distribution of income. When a sale is ordered it is conducted in the same way as that laid down in the law of 1829. The amount of funds and income is each year reported to the State Auditor.

Of the township lands all have been sold except about 7,400 acres, including some acquired by the foreclosure of mortgages given to secure loans.[2] A large part of this unsold land is under permanent lease, so that the township funds can increase but slightly in the future.

It has already been mentioned that in 1832 Congress gave the State permission to sell her saline lands for the benefit of education.[3] In the next year, by order of the Legislature, the lands were surveyed, appraised, and offered for sale.[4] The proceeds were to be loaned by the State Treasurer on mortgages, and both principal and interest were "to be hereafter devoted to education."[5] By a later law the income was definitely appropriated "to the use of common schools."[6] This method of handling the fund was pursued until 1844, when it was ordered that all moneys "already in hand or to arise hereafter" from these lands should be divided ratably among the counties. Each county was to loan its share and apply the income to the support of schools within its limits.[7] In pursuance of this arrangement all receipts until 1854 were placed in the hands of the counties as a part of the common school fund.[8]

By 1850 the best of the land had been sold, and it was

[1] This rate since 1873 has been eight per cent.—Indiana Laws, 1873, 73.

[2] Report Supt. of Public Instruction, 1882, 202. [3] *Supra*, 35.

[4] By the requirements of Congress they could not be sold for less than one dollar and a quarter per acre.

[5] Indiana Laws, 1833, 125. [6] *Ibid.*, 1834, 326.

[7] *Ibid.*, 1844, 68. Amended by act of January 12, 1845.—*Ibid.*, 1845, 60.

[8] The amount of receipts from sales thus distributed was $48,943.13.—Auditor's Report, 1872.

thought that the remainder could not be disposed of save at a lower price than the State was permitted to receive. On due presentation of this opinion to Congress the limitation on the price was removed.[1] The lands were thereupon ordered sold at public auction at a minimum price of fifty cents per acre.[2] The proceeds were not to be distributed among the counties as before, but were to be held by the State as a part of the school fund. The lands sold slowly, but by 1873 all had been disposed of and the final payments made by the purchasers. The money was borrowed by the State from time to time, at six per cent. interest. The Legislature has adopted the policy of issuing special non-negotiable bonds bearing six per cent. interest for all portions of the school fund held and used by the State. The receipts from the saline land since 1854 have been consolidated with other school moneys, and are represented by portions of these bonds.[3]

By the constitution of 1851[4] the net proceeds of the swamp lands granted by Congress in 1850 were made a part of the common school fund. In furtherance of this provision the treasurer of each county was directed by law to sell the swamp lands lying in his county. The money was to be deposited with the State and the interest thereon annually distributed to the schools.[5] The provisions of the law were not in harmony with the terms of the grant, according to which the first duty of the State was to drain and reclaim the lands. After they were thus reclaimed any income from them might be used for such purposes as the Legislature or the constitution designated. The law of 1852 was repealed three years later, and a swamp-land commission created in each county to take charge of the work

[1] 10 U. S. Stat., 15.

[2] Indiana Laws, 1855, 160.

[3] In 1865, $34,323.89 from this source was thus incorporated.—Auditor's Report, 1868, 12. Indiana Laws, Special Session, 1865, 57. Again in 1873 the last receipts, amounting to $6,211.45, were so placed.—Auditor's Report, 1873, 79. These two amounts are in addition to the portions of the fund held by the counties under the law of 1844.

[4] Art. VIII., Sec. 2.

[5] Revised Stat., 1852, Chap. 104.

of reclamation. As fast as possible the lands were to be sold and the proceeds paid into the State treasury and credited to the swamp-land fund of the county whence they were derived. Out of this fund the expenses of the enterprise were to be paid, after which the residue was to go to the school fund.[1]

Many lands designated as swamp were not such in reality. These sold readily, while many others, especially in one portion of the State, required much labor and expense to render them of any value whatever. Large sums have been received from the sales, but the expenses have mounted up proportionately. Of the proceeds about thirty-eight thousand dollars have been added to the school fund.[2] The whole matter is at present in a tangled state, but there is no probability that the schools will derive any thing further from this source. It is charged that the grant has been neither carefully nor economically managed, and that an honest execution of the law of 1855 would have brought many thousands of dollars into the school fund.[3]

The experience of Indiana in the management of all these school funds has developed a few interesting features. While following closely in the footsteps of Ohio, she avoided all the serious pitfalls into which her older sister stumbled. Of giving permanent leases without provisions for revaluation she happily soon learned the folly. When she adopted the system of sales, by giving the former lessees no "preëmption right" to purchase at old and low valuations, she escaped another evil. Of special legislation she had little. Her provisions for the sales were reasonably prudent. If, on the

[1] Indiana Laws, 1855, 204.

[2] Indiana Laws, 1873, 41. Auditor's Report, 1873, 79.

[3] "It is believed by good men that much might have been thus added [to the school fund] if the Swamp Land Commissioners had cared less for themselves and more for education—briefly, if they had all been honest."—Report Supt. of Pub. Instruction, 1866, 73.

Mr. Geo. W. Julian says that, "the Swamp Land Act [of Congress], owing to its loose and unguarded provisions, and its shameful mal-administration, has been fruitful of wide-spread spoliation and plunder."—Julian, 98. This general statement is applicable to at least two of the States under consideration in this paper.

whole, her lands have not produced all that they might (and those of what State have?), it is attributable largely to the disadvantage under which she labored by the terms under which she held them. Local management was the necessary characteristic of her system, and with it came into play local interests and desires. Many townships sold their lands at too early a day, and in numerous instances losses through the poor investment and careless handling of the proceeds reduced the ultimate fund. Had the State at the start, as it has since 1851, made the counties responsible for all losses in the township funds, this last evil would not have been serious. The tendency toward too hasty sales seems difficult of avoidance and has existed in various degrees in all the States. To determine the right moment for beginning the sales is no easy problem.

The method of investing the funds in Indiana differs so widely from that in Ohio as to suggest a comparison of the two. In Ohio the entire fund has been lent to the State. The money has long since been spent for various purposes, and the income of the fund is the interest paid by the State on this money, borrowed and spent. The interest must be raised by taxation. Thus the whole thing comes to saying that the people are taxed for the entire support of the schools. The fund is safe, and the income is sure and invariable. But though the money thus borrowed by the State may have lessened State taxation in the past, so far as the present and all future generations are concerned, the burden of supporting the public schools is no lighter than it would have been without a grant of land. In Indiana, on the other hand, the proceeds of the lands have been loaned on mortgage.[1] The advantages claimed for this system are that it enables any owner of real estate to borrow small sums of money readily, that the security is good, and that the people as a whole are not obliged to tax themselves to pay the interest on the fund. Its disadvantages are two. The liability

[1] I am not speaking of the "common school fund," which to a large extent has been borrowed by the State, as in Ohio, and annual interest paid thereon from the proceeds of taxation.

to losses through defalcation or poor investment, which formerly existed, is, as already shown, removed. One objection is that the income will vary as the current rate of interest rises or falls, for while the State may provide that this money shall be loaned at a certain rate, if the market rate is less loans cannot be made except at a lower interest. The other disadvantage is that the system is expensive, for it requires the attention of many officers and the keeping of many accounts. Each of these systems is successful when properly carried out, and each is strongly advocated. It is perhaps impossible to decide which is the better. Under the Indiana system the rate of interest earned by the fund has hitherto been higher than under the other, though this will not always be the case. In another place an account is given of a third system, adopted by some States, which appears to possess the good features of both of these, with few if any of their disadvantages.[1]

(*c*) ILLINOIS.

Though the sections for the use of schools in Illinois were reserved in 1804, they were made the subject of no legislation or supervision during the territorial days. When Illinois was admitted into the Union, in 1818, they were given to the State in the same terms as those employed in making the grant to Ohio. The Legislature was accordingly able within certain limits to exercise full control over them. In 1819 the General Assembly, following the precedent established by the other two States, adopted the policy of leasing the lands. The county commissioners were ordered to appoint three trustees for each township, whose duty it was made to survey, sub-divide, and lease the school section for ten years "on the best possible terms." All rent received was to be applied to the maintenance of schools.[2] The leases given by the trustees under this law were mainly improvement leases.[3]

[1] *Infra*, 113.

[2] Illinois Laws, 1819, 107. At least one lot (forty acres) bearing timber was to be reserved on each section where there was timber. [3] Ford, 78.

In 1825 a system of local taxation for the support of schools was adopted. At the same time it was determined that the rents arising from the school lands should be annually distributed among such of the inhabitants of the township as had contributed during the year, by tax or otherwise, to the support of a common school. The division was to be in proportion to the amount of tax or contribution paid by each.[1] This curious use of the income of the grant did not continue long, for the very name of a tax seems to have been so odious to the people of Illinois in those days that the whole law excited strong opposition.[2] In consequence of this feeling it was so modified in 1827 that no man was to be taxed for the support of any free school without his own written consent,[3] and the rent from the school section was to be distributed to the districts in the township, in proportion to the number of scholars.[4] The township trustees who had hitherto been appointed by the county commissioners were, after 1825, elected by the people.

In 1829 the General Assembly passed a law providing for the sale of school lands as soon as permission should be obtained from Congress. By this law the county commissioners were to appoint an agent in each township who, on the written petition of nine tenths of the freeholders, was to sell the lands at public auction for cash at any price not less than one dollar and twenty-five cents per acre. The proceeds were to be loaned by him at twelve per cent. interest, for not more than five years, on real estate worth twice the amount of the loan. The interest was to be paid to the school trustees, and by them distributed under the orders of the county court.[5]

Having waited two years for Congress to take the action required to bring this law into operation, the impatient Legis-

[1] Edwards, 195, 196.

[2] "This valuable law was in advance of the civilization of the times. . . . The poorest men . . . preferred to pay all that was necessary for the tuition of their children *or to keep them in ignorance*, rather than submit to the mere name of a tax by which their wealthier neighbors bore the brunt of the expense of their education."—Ford, 59.

[3] Edwards, 197. [4] Pillsbury, cxxix. [5] Illinois Laws, 1829, 150.

lature, in 1831, ignoring all question as to its authority, passed a second act providing for immediate sales.[1] Its terms were essentially those of the first law, save that the sale was to take place on petition of three fourths of the voters of the township, and that previous to the sale the trustee must appraise the land. This valuation, which could not be lower than one dollar and a quarter per acre, was to be the minimum price of the land.[2] The law permitted the proceeds to be loaned for five years at twelve per cent. interest to individuals on real-estate security, or for ten years at six per cent. interest to any association of citizens desiring to erect a school-house. In both cases the amount of single loans was limited. In 1833 the requirement of cash payments on purchases was repealed, and sales were thereafter made on credits of one, two, and three years, with interest.[3]

The advantages to be derived by selling the lands at so early a date are not obvious. The reasons urged in the Legislature by those who advocated the change were that unless the grants were immediately sold the children of that generation would derive no benefit from them, and that the lands, if longer leased, would be ruined "by being stripped of their timber."[4] To appreciate the absurdity of the latter reason one needs only to know that the greater part of the school sections, like the other lands in Illinois, was open prairie and bore no timber. Neither is there any strong evidence to show that they were not leasing as rapidly as the population would warrant, and that they were not furnishing a moderate income. Nor had Illinois experienced any such ills from leases as had been encountered by Ohio and Indiana.

Though these were the reasons given in the debate on the measure, it is impossible to shake off the suspicion that some other motive lay in the background.[5] If we can believe Governor Ford, that motive was a desire to please the lessees, who wished to purchase at low prices the lands which they

[1] Illinois Laws, 1831, 173.

[2] This provision for a valuation was repealed in 1833, and again enacted in 1835. [3] Revised Stat., 1833, 564. [4] Ford, 79.

[5] "These were the reasons assigned in debate, but they were not the true reasons for these laws."—*Ibid.*

were occupying.[1] To how great a degree such motives influenced the Legislature it is of course impossible to know, but some of the subsequent proceedings under the law go far to show that they must have had weight. The lands were in many instances deliberately undervalued by the trustees and sold for less than similar lands would have been sold by private parties.

In 1840 a law was enacted providing that where a majority of the inhabitants of any township were of the opinion that section sixteen had been valued too high, it should be revalued at any sum not below one dollar and a quarter per acre.[2] In the following year the whole legislation on the subject of schools and school lands was revised, and a general law enacted covering all points. By this law[3] sales in any township were to be made at public auction by the county commissioner on petition of two thirds of the voters. Though the lands were to be appraised before the sale, no minimum was established by the law, and in many cases exceedingly low valuations were made.[4] It is difficult to understand why the wise provision heretofore in force, that no lands should be valued at less than a certain fixed price, was omitted from this law. Certainly no good came from the change. By the new law the purchaser was allowed from one to five years in which to make payments. The proceeds of the sales were to be loaned by the county school commissioners at twelve per cent. interest, payable semi-annually, and debts due the school fund from the estate of a deceased person were given a preference over all debts except funeral expenses and the expenses of the last sickness. Thus far the State had been selling the lands without any authority from Congress,

[1] "I speak what I know when I say that the laws to sell school lands were passed to please the people who were settled on them, who wanted to purchase them at the Congress price, whilst the other inhabitants, being divided into little factions and thinking more of success at one election than [of] the interest of all posterity, and acting upon the principle that what is everbody's business is nobody's business, aided or suffered the mischief to be done."—Ford, 79.

[2] Illinois Laws, 1840, 85. [3] Illinois Laws, 1841, 259–287.

[4] "In many cases the lands were systematically undervalued. The lands in Franklin County brought on an average but seventy cents per acre."—Pillsbury, cxxvii.

but in 1843 that body passed an act giving the authority on the same terms as in Ohio and Indiana. It also legalized and ratified all sales that had been made.[1]

The law of 1841 regulating the sales, was substantially the same as that now in force. Since 1847, however, the funds of each township have been loaned by the township treasurer instead of the county commissioner.[2] In 1845 the rate at which township funds might be loaned was reduced to eight per cent.,[3] and in 1849 raised to ten per cent.[4] In 1865 loans were authorized to be made at any rate between six and ten per cent.,[5] in 1867 at from eight to ten and, finally, in 1872, the limits were fixed at six and eight per cent. In 1872, also, a law was adopted authorizing loans of the funds to school districts on bonds issued for building purposes. All township funds have been loaned on real estate, on school bonds, and in the form of credit sales.[6] The investments have been almost uniformly safe, and few losses have occurred. The average rate of interest on the loans has been considerably higher than that paid by the State on educational funds which it has borrowed. "Township treasurers have always been held to strict account in the management of the school fund, the courts holding that nothing can relieve them from their obligation to safely keep and pay over such funds, but the act of God or of the public enemy."[7] Over ninety-nine per cent. of the lands have been sold, most of them at an early day, at an average of three dollars and seventy-eight cents per acre. The remaining 8,513 acres are under lease, and many of them are exceedingly valuable.[8]

Viewed purely with reference to the accumulation of a large permanent fund, the sales of the school lands were begun at too early a date. Had they been held under lease for fifteen or twenty years longer, their market value would

[1] 5 U. S. Stat., 600.
[2] Illinois Laws, 1847, 131, Sec. 50.
[3] *Ibid.*, 1845, 57.
[4] *Ibid.*, 1849, 166.
[5] *Ibid.*, 1865, 112.
[6] Pillsbury, cxxviii.
[7] *Ibid.*
[8] The leased school lands in Cook County alone are valued at two thirds the amount received from all those sold in the entire State. Exclusive of those in Cook County, the leased lands are worth about thirty dollars per acre.—Pillsbury, cxxvi, cxxvii.

have been more than trebled.[1] It is, however, strenuously maintained by some that a small sum available at an early day was of greater service to the people than a far larger sum a score of years or a generation later, and that, therefore, early sales were advisable.[2] While there is much truth in this, caution and discretion must be used in selecting the time for selling. The proper management of an educational trust fund, intended for the benefit of all future ages, cannot consist in so disposing of it as merely to satisfy the needs of the earliest beneficiaries. The interests of the vastly greater number who will arise are certainly entitled to careful consideration.

In 1852 the management of the swamp lands was entrusted to the counties in which they lay. It was enacted that after any county had sold enough to pay the expenses of reclaiming the rest within its borders, the remainder should be equally divided among the townships in the county for educational purposes, unless the county saw fit to use them for works of internal improvement.[3] Subsequent laws while varying the details of this arrangement have made no essential change in the main features of the plan. The lands have been controlled entirely by the local authorities. Good management has been the rule, and the proceeds over and above the expenses have been large. These have been added by the townships to the sixteenth section funds, and it is impossible to state the exact sum derived from them. The total township educational funds to-day are over a million and a half dollars greater than the proceeds of section sixteen, and it is asserted by State officials that the greater part of this increase has been derived from the swamp lands.[4] It is probable that at least a million dollars has been derived by the school funds from this source.

When Illinois became a State, three per cent. of the proceeds of the sales of public lands were granted to her as an

[1] As already stated, the average price received for those sold has been $3.78. Statistics show that in 1850 the price of improved land in Illinois ranged from $4 and $5 to $25 and $30 per acre, and that in 1857 the prices paid were still higher. Cultivated land *rented* in 1857 for from $1 to $3 per acre.—Gerhard, 401–405.

[2] Pillsbury, cxxvii.

[3] Illinois Laws, 1852, 178.

[4] Ills. School Report, 1881–2, cxxv.

additional endowment for education, one sixth of it to be bestowed on a college.[1] In 1820 Congress provided for the payment of this three per cent. to the proper State authorities as fast as the sales were made. The State was required to render to the Secretary of the Treasury an annual account of the disposition made of this money, in default of which future payments were to be withheld.[2] In 1821 the State Treasurer was authorized by the General Assembly to receive the moneys from time to time, and to deposit them in the State bank. The bank was to pay the treasurer six per cent. interest on such deposits.

What particular branch of educational work was to be promoted by five sixths of this fund had not been specified by Congress, but in 1825 the Legislature decided that it should constitute a common school fund. It was provided that five sixths of the interest paid by the bank should be distributed annually among the counties for school purposes in proportion to the number of white children of school age.[3] Whether any interest was actually paid by the bank I have been unable to ascertain.

The money remained on deposit until 1829, when the governor was authorized to borrow the whole fund for State uses, at six per cent. interest, the interest to be added to the principal at the end of every year, until the money should be refunded. The occasion for this diversion of the interest from its legitimate use lies in some obscurity. The State needed money, but there is no evidence that the taxes were increased to meet the needs. Indeed, there seems to have been a dread of taxes, and it is not improbable that the fund was borrowed at this low rate of interest in order to enable increased expenses to be met without taxation. The motive which inspired the whole measure, if we are to believe some writers, was creditable neither to the honor nor to the wisdom of the Legislature. It is charged that the transaction was a mere scheme of the legislators to win favor with the people, that the school fund was robbed, that a permanent debt carrying a large interest was unnecessarily saddled upon

[1] *Supra*, 36. [2] 3 U. S. Stat., 610. [3] Pillsbury, cxxxvi.

the State forever for the sake of relieving the people in earlier days from proper taxation, and that the average amount acquired by the State each year under this act was less than the amount now annually required to meet the interest alone.[1] The provision for adding the interest to the principal until the loan was repaid goes far to substantiate some of these charges. Not a dollar was required to meet the interest. The whole process consisted in making a few entries on the books of the State at the end of each year. So long as the State chose, if Congress would consent thus to be hood-winked, neither the principal nor the interest need be actually paid. Further, this money was borrowed, and the interest diverted from the schools in the very year when sales of section sixteen were first ordered. One ground for ordering those sales was alleged to be that a greater income was needed by the schools than was then accruing. Yet at the very same time the Legislature withheld the income of the three-per-cent. fund from the same needy schools. No explanation of this direct inconsistency has ever been offered. The whole scheme certainly has any thing but a clean and honest appearance.[2]

[1] The following was written in 1847: "To relieve the State treasury from debt, the Legislature, to save the popularity of members by avoiding the just and wholesome measure of levying necessary taxes, passed laws for the sale of the seminary township, and for borrowing the proceeds of the sale and the three-per-cent. school fund; and for paying them out as other public moneys, and for paying an annual interest thereon to the several counties for the use of schools. By which means the debt of the State for these moneys alone amounted in 1842 to $472,493 [now $829,815]. Thus, as I conscientiously believe, was a township of land sacrificed at low prices, the school fund robbed, and a debt of near half a million of dollars fixed upon the State, rather than that the members would run the risk of not getting back to the Legislature, or of being defeated for some other office. This money was paid into the treasury in sums averaging $20,000 per annum. The annual interest now paid on it is $28,000 [in 1882, $49,799]. And so to save the popularity of the members of the Legislature, the State has received about $20,000 a year for about twenty-five years, by which she has become bound to pay $28,000 per annum forever; the difference against the State being the difference between twenty thousand dollars borrowed, and twenty-eight thousand dollars annual interest, and the difference between eternity and twenty-five years."—Ford, 79.

[2] A consideration of some further points in this connection is given in treating of the seminary lands in Illinois.—*Infra*, 133.

This temporary diversion of the fund from the cause of education, and the failure to render the annual report to the Secretary of the national treasury, caused the United States to withhold further payments of the three per cent. for several years. A voluminous correspondence ensued between the officers of the two governments. Finally, in 1831, Congress repealed the law requiring the rendering of these accounts,[1] and the payments were thereafter made annually to the State. In 1835 the Legislature ordered that all interest which had accrued to January 1, 1834, should be added to the principal, and that thereafter the interest at six per cent. should be distributed to the several counties for the support of schools in proportion to the number of white children in each county.[2] From that year until the present time this distribution has been made. In 1872, however, the word "white" was dropped from the law.[3] The payments to the State were made as the lands were sold by the national government until 1863, when the last public lands in Illinois were disposed of. The total amount of this three-per-cent. fund received from the government, as shown on the books of the State, is $712,745.34.[4] Five sixths of this, the amount devoted to common schools, is $593,954.45. But there was added to the fund accrued interest to January, 1834, amounting to $19,408.51, making the total fund $613,362.96,[5] which exists as a State debt bearing six per cent. interest until the principal shall be paid.

This three per cent. has been paid only on lands sold for cash. Many public lands in Illinois have been located by military land warrants. Within a few years the State has made the claim that she is entitled to the percentage on these lands the same as if they had been sold for cash. She petitioned for a writ of mandamus to compel the Commissioner of the United States Land Office to make a statement of the account for the purpose of obtaining the sum

[1] 4 U. S. Stat., 431. [2] Illinois Laws, 1835, 22.

[3] One tenth of the income was appropriated to the Institution for the Deaf and Dumb from 1839 until 1872.—Pillsbury, cxxxvii.

[4] Pillsbury, cxxxvii. The figures as taken from the books of the United States are slightly less. See Document A, 238. [5] Pillsbury, cxxxvii.

due the State from these lands. The United States Supreme Court has recently denied the petition, and decided that lands located with bounty warrants are not within the scope of the act granting the three per cent.[1]

(*d*) MICHIGAN.

While the legislative power in the Territory of Michigan remained, in accordance with the provisions of the ordinance of 1787, in the governor and judges, no care was given to the subject of the school lands.[2] In 1824 the people of the territory elected their first local Legislature. In his message to that body the Governor of the territory called attention to the school reservation, and suggested "its immediate preservation and ultimate application in conformity with a well-digested system." He intimated, however, that it was a question whether—without the express sanction of Congress—the territorial Legislature had authority to do any thing more than protect the lands from waste.[3] In consequence of this suggestion the legislative council addressed a memorial to Congress asking for authority "to take the charge and management of the said lots."[4] In 1828 Congress granted the prayer of the memorial, and authorized the Governor and council to lease them for any period not exceeding four years[5] in such manner as to render them productive and most conducive to the object for which they were designed.[6]

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[1] 16 Chicago Legal News, 214. The volume of official reports containing this decision is not yet issued.

[2] No surveys of the territory had been made until after the War of 1812, and until then even the location of sections sixteen was not known.

[3] Journal Legislative Council, First Sess., First Council, 12.

[4] *Ibid.*, 88.

[5] The reasons for this short period are given in the report of a committee in Congress as follows: "Strong doubts are entertained of the propriety of authorizing a territorial Legislature to grant leases for a term of time beyond [that for] which the territorial government will probably exist. And in conferring the authority asked for upon the Legislative Council of Michigan, it is believed that it should be done with a limitation to a short period of time."—State Papers, 4 Public Lands, 762.

[6] 4 U. S. Stat., 314.

In the same year a territorial law was adopted empowering each township having twenty electors to elect trustees, who should lease the school section for not more than three years, the proceeds to be applied "towards the pay of school teachers in said township."[1] It is worthy of note that this earliest law of Michigan contained the wise provision not found in the laws of the other States, that no resident upon or lessee of any school section should be eligible to the office of trustee. In the next year more definite provision was made for the distribution of the proceeds of rents, and the Governor was authorized to appoint a Superintendent of Common Schools to take charge of the school lands in all townships where trustees had not been elected. His authority was confined to protecting them from waste and injury. All trustees were to report to him annually the condition of their school lands, rents, etc., and he was to report to the council.[2] No Superintendent was appointed, but the law is noteworthy as the first in the whole Northwest Territory providing for one central authority to manage all the school lands. It foreshadowed the eventual departure from the system in vogue in the three oldest States of the territory—a change from local to central management. In 1832 the duties of the township trustees were transferred to the township commissioner of schools, thus doing away with one needless set of officers.[3]

In the general revision of the laws in 1833 the powers of the commissioners remained unaltered. The provision for a Superintendent of Common Schools was revived, and he was given the power to lease school lands in any township where no commissioners were elected.[4] Still the Governor did not appoint any one to the office, perhaps because the salary (twenty-five dollars a year and official expenses) was not sufficient inducement to any one to accept the position.

[1] 2 Territorial Laws, 695.

[2] *Ibid.*, 774, 775.

[3] 3 Territorial Laws, 950. In addition to the former provisions for leases, these commissioners were by this law authorized "to lease . . . or to manage and conduct the same in any other way they shall consider best calculated to enhance the value thereof,"—that is, to give improvement leases.

[4] *Ibid.*, 1012–1020.

During these years many of the school lands were leased by the township authorities and produced small incomes.

The movement toward a State government began in 1832, and finally culminated in 1835, in advance of any authority from Congress, in the meeting of a convention and the adoption of a State constitution. An account of the subsequent negotiations and the action of Congress, so far as concerns the question of education, has already been given.[1] It is only necessary to repeat here that the sixteenth sections were granted in 1837 "to the State for the use of schools." This change from the terms of the ordinance of 1785 and the act of 1804 enabled the Legislature to assume the entire management of the lands and funds, without the intervention of any local authorities. It also obviated the necessity of keeping separate the fund of each township, and permitted the whole of the proceeds to be consolidated into one State fund. It removed all occasion for a numerous crowd of local officials, greatly simplified the management of the trust, and lessened expenses. The question of the right of Congress thus to make a change which deprived the inhabitants of the individual townships of the exclusive avails of their own school section was often debated in the early days of the State, but is hardly worth discussion now.[2]

The constitution of 1835 provided that "The proceeds of all lands granted by the United States to this State for the support of schools, which shall hereafter be sold or disposed of, shall remain a perpetual fund, the interest of which, together with the rents of all such unsold lands shall be inviolably appropriated to the support of schools throughout the State."[3] It also provided for the appointment by the Governor of a Superintendent of Public Instruction whose duties should be defined by the Legislature.[4] The first Legislature passed an act under which the Superintendent was given immediate charge of all lands in townships where no commissioner had been elected.[5] He was also instructed to draw up and report to the next Legislature (1) a system for the organization and establishment of common schools

[1] *Supra*, 38. [2] See Shearman, 15. [3] Article X., Sec. 2.
[4] Article X., Sec. 1. [5] Mich. Laws, 1835–6, 49.

and a university; (2) an inventory of all educational lands and property, their condition and location; and (3) his views relative to the further disposition of the lands. On the same day that this act was passed the Governor nominated to the office Rev. John D. Pierce, to whom more than to any other man is due the excellent school system of Michigan.

In pursuance of his instructions the Superintendent in January, 1837, submitted an elaborate and comprehensive report covering all the subjects referred to him. So much of the report as touches upon the management of the land grant demands attention. He recommended that the charge of all the lands and the investment of the moneys arising from them should be given to the Superintendent, subject to legislative direction. Starting with the assertion that "that disposition of the school and seminary lands will be the wisest and best which will ultimately yield to the State for the support of public schools the greatest amount of revenue," he discussed the relative advantages of leasing and selling.[1] His conclusion was that the lands should be sold "gradually as the wants of the country and a sound discretion may seem to warrant." If by this it was also meant that unsold lands should be leased, as far as practicable, on short leases, the general theory of the Superintendent was wise. Its weak point lay in the fact that the "sound discretion" presupposed is too rare a quality to afford any absolute security that it will be exercised when needed.

Whether the immediate sale of any portion of the lands was expedient rests upon practical considerations. The country was then in a period of speculation. Immigration was large, prices were high, and real estate was selling rapidly. These facts undoubtedly influenced the views of the Superintendent. Then too, in some of the more thickly settled portions of the State the school lands had under previous leases received some degree of cultivation, and under the existing demand were sure to command high prices. On the whole it was perhaps wise to dispose of a limited amount of the lands, and to lease the remainder until they should reach a value at which sound wisdom would advise their sale.

[1] Senate Journal, 1837, Appendix, Document 7.

The detailed plan presented by the Superintendent seemed likely, if adopted, to produce a large ultimate fund. He proposed that a minimum price of five dollars per acre be placed upon the land and that only a limited amount be put upon the market at that time.[1] He would invest the proceeds by loaning them to such of the counties as desired to borrow, in sums of five or ten thousand dollars at seven per cent. interest, any surplus above the needs of the counties to be loaned to individuals on mortgages.[2]

The Legislature studied this report with great care, and approved the main features of the plan proposed. In March, 1837, a law was adopted covering the whole subject. The Superintendent of Public Instruction was authorized to take charge of all educational lands in the State and to make sales to the amount of one and a half million dollars, at public auction for not less than eight dollars per acre.[3] Loans of the proceeds were to be made as suggested by the Superintendent, and any unsold lands were to be leased for not more than three years. The income was to be distributed among the townships of the State in proportion to the number of children between five and seventeen years of age.[4] The law also required the Superintendent to make in each annual report a statement of the condition of the university and school funds.[5] During the next nine months over thirty-four thousand acres were sold at an average price of a little less than twelve dollars per acre.[6]

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[1] *Ibid.*, 70.

[2] His estimate of the amount and value of the lands is interesting for purposes of comparison. Of the 1,148,160 [1,067,397] acres he considered one fourth as waste land. The remainder in the lower peninsula he graded into several classes, worth from four to fifteen dollars per acre respectively, while those in the upper peninsula "will bring one million dollars." The total estimated value was $4,850,000. He cautiously added: "Much must depend on the adoption of wise councils [*sic*] and good management."—*Ibid.*, 71–73.

[3] Purchasers were to pay one fourth in cash and the remainder at stated periods, with interest. As amended three months later one tenth only was to be paid in cash and the balance in nine annual payments with interest. Security was to be taken for future payments when it was deemed necessary.—Mich. Laws, 1837, 316. [4] *Ibid.*, 209. [5] *Ibid.*, 213.

[6] Senate Docs., 1838, 43, 44. The Superintendent's "safe estimate" this year was that the ultimate fund would be $5,983,264.

This auspicious beginning afforded no premonition of the disappointment in store for those who believed that a happy and permanent solution of the land problem had been found. The law had not been in force a year before the first attempt was made at its overthrow. A petition was presented to the Legislature in 1838 from the inhabitants of one township in the State praying for a reduction of the price of lands in that township. The ground of the plea was simply that at the established price the lands would not sell immediately, whereas their speedy sale and occupation was a matter of material interest to the township. No mention was made of what might be for the advantage of the schools! No such minor matter was thought of by the good people who signed the petition. The Legislature declined to inaugurate a system of special laws for the benefit of particular localities, and refused to grant the petition.[1] At this session the Legislature repealed the law authorizing loans to individuals in the evident expectation that the counties would desire to borrow the whole.[2]

Troubles far more serious soon arose. The sales decreased during the next two years, and the average price received was not far above the minimum established by law.[3] Many of the earliest purchasers also failed to pay the instalments of purchase money and interest due under their contracts.[4] A single cause was responsible for all these things. The financial embarrassment following the crisis of 1837 was general throughout the country. Prices had fallen and every one had difficulty in meeting his obligations. The Legislature in 1839, at the suggestion of the Governor, extended the time for the payment of instalments of purchase money due under previous contracts.[5] This act, suggested by good motives, was the beginning of a long line of relief

[1] The reasons given in the Legislature for denying the petition were that though those particular lands might not then command the legal minimum, they soon would, and that the township must "submit to a temporary inconvenience which will ultimately be productive of the general good."—House Documents, 1838, No. 21.

[2] Mich. Laws, 1838, 233.

[3] Senate Documents, 1839, 232; 1840, I., 22, 23.

[4] Senate Documents, 1839, 230.

[5] Mich. Laws, 1839, 13.

legislation which ended in dire disaster to the school funds. In the next year the Legislature supplemented it by extending the time for the payment of interest then due on the land contracts, thereby declaring that purchasers should not yet forfeit their lands even though they made no payments for a time.[1]

The other disappointment—the striking decrease in the sales—was a direct result of the financial depression, but was considered by a few members of the Legislature in 1839 as affording ground for a reduction in the established price. Though the project was urged by numerous petitions, it found little favor in the Legislature.[2] A year later the matter again came up. Another instalment of petitions was forwarded to the Legislature. This time, however, the question was of a reduction in the price not only of unsold lands, but also of those which had been sold and on which partial payments had been made. It is needless to say that this last scheme was vigorously urged by the purchasers. The committee to whom the projects and petitions were referred, acknowledged that there had been a great depreciation in the value of land, but thought it inexpedient to reduce the price of any unsold land. With reference to the lands already sold under contract they denied that it was properly within the power of the Legislature to afford relief to those who had voluntarily though perhaps unwisely purchased at high prices.[3] The entire project failed for the time, though its advocates were many.

In 1840 no lands were sold for more than the minimum price, and it appeared that nearly one third of those previously sold had been forfeited for non-payment of the instalments

[1] Mich. Laws, 1840, 138.

[2] From the report of a committee I find that the eminently sound reasons for making no reduction were that in the settled parts of the State even the poorer lands were selling for more than the minimum price, that those unsold would soon be worth that price, and that a reduction under such circumstances would be an injustice to the schools. Still the committee took the ground only that a reduction "at present" would be unadvisable, a position which boded evil in the future.—House Documents, 1839, 188.

[3] House Documents, 1840, II., 529, 530.

due.[1] The Superintendent of Public Instruction now recommended that the price of unsold lands be reduced to five dollars per acre.[2] If immediate sale was the only object to be attained, the price was undoubtedly too high. The Superintendent had, however, several years before correctly stated that the true policy was that which would ultimately produce the greatest amount of revenue. The low price and the small demand for real estate from 1838 to 1841 was mainly a temporary result of the panic of 1837. When the depression had passed, prices again rose. Was this reduction then either necessary or expedient? The Superintendent went even further in his suggestions. While he did not openly advocate relief to those who had already purchased, he expressed his opinion "that a reduction in many cases would be both equitable and just."[3] Assuming that some such relief measure was likely to be adopted, he contented himself with suggesting points to be covered by it, instead of showing that it was no part of the duty of the Legislature to relieve the embarrassments of purchasers at the expense of a trust fund.

With these recommendations before them, reinforced by numerous petitions, the Legislature lost its firmness. The minimum price of unsold lands was reduced to five dollars.[4] For the relief of past purchasers they enacted that any one who by the end of the next year should have paid twenty per cent. of the purchase money under his contract and all interest then due should not be required to pay any further instalment of principal, but simply annual interest on the unpaid balance.[5] By suspending the payments of principal it was hoped that the interest would be paid without trouble or delay. These hopes were destined never to be realized. The purchasers having gained ground at nearly every move,

[1] Senate Documents, 1841, I., 322, 375, 389.

[2] "That the minimum price of unsold lands is too high there can scarcely remain a doubt. Time, which corrects opinion, has shown that five dollars per acre for school lands is as high as they can be expected to sell."—Senate Documents, 1841, I., 320. [3] *Ibid.*, 321. [4] Mich. Laws, 1841, 157.

[5] *Ibid.* To all future purchasers the same privilege was extended, save that they must pay twenty-five per cent. of the purchase money and interest on the balance.

were determined to accept nothing but a complete surrender to their demands.

In 1841 a new Superintendent of Public Instruction was appointed. His first report showed painful arrears in the payment of both principal and interest, and developed the fact that many who, under the terms of their contracts, had long since forfeited their lands, were still in undisturbed possession of them, though according to the Superintendent they never intended "to pay another dollar either of interest or principal."[1] In view of all these facts and the precedent established by relief measures already noted, he urged either a rigid enforcement of the implied intention of the relief law of the previous year by declaring forfeited all lands on which twenty per cent. should not have been paid by the date fixed in that law, or that the Legislature should adopt a system of graduated reduction of prices on all lands already sold.[2]

The prayers for relief again poured in, and the time had finally come when this trust fund was to be sacrificed to the clamors of interested parties, on the sole and untenable ground that "the State had driven a hard bargain with the parents of its wards,"[3] which it would be "legal extortion" to enforce.[4] A law was enacted in 1842 providing that the associate judges should, on application of the purchaser, examine any school land purchased at eight dollars an acre or over, and appraise its value in its actual condition at the time when it was first bought. The difference between this appraised value and the contract price was to be credited to the purchaser.[5] The only proviso was, that the reduction should not be more than forty per cent. of the price originally named in the contract. This remarkable law permitted every one who had purchased school lands between 1837 and 1841 to obtain his title by paying a lower price than he had voluntarily offered. Under its provisions the school fund was lessened over one hundred and seventy-five thousand dollars. The Legislature was, indeed, generous. The law reminds one of the provisions in Ohio by which lessees were

[1] Joint Documents, 1842, 293. [2] *Ibid.*, 294. [3] Smith, 18.
[4] Gregory, 7. [5] Mich. Laws, 1842, 44.

permitted to purchase lands at old and low valuations. All that the most tender-hearted and weak-headed sympathy could demand would have been yielded by permitting past contracts to be modified according to the true value of the land at the time of appraisement.[1]

The victorious purchasers hastened to take advantage of this munificent gift, and many of them boasted openly of the bargains they had made at the expense of the schools.[2] In the first year alone 26,117 acres, or one third of the amount sold up to that time, which had originally brought an average of over eleven dollars per acre, were reduced about thirty-six per cent. in price, and purchasers were credited over one hundred thousand dollars by virtue of the reduction.[3] By January, 1843, the amounts originally contracted to be paid had been reduced by forfeitures and relief legislation from $711,000 to $474,000,[4] and the hopes entertained in past years were fast vanishing.[5] A rigid provision for forfeiture in cases of non-fulfilment of contracts, adopted in 1842, brought prompter and fuller payments of principal and interest. The harm had, however, been done, and, dismayed by the results of the "retrospective" reduction of prices, the friends of education indulged in vain regrets. Too late did the evils attendant upon all relief legislation make themselves known.[6] In later years this page

[1] The law also permitted any previous purchaser to surrender any portion of the land he had bought, and retain the balance at the original price per acre. All previous payments were to be applied only in the part retained. This of course threw back upon the State only the poorest lands, and enabled the purchasers to pick out choice pieces which, taken by themselves, were unquestionably worth more than the contract price.

[2] Joint Documents, 1843, 220. [3] *Ibid.*, 211. [4] *Ibid.*, 219.

[5] "The seventy-eight thousand acres of school lands, once sold at an average price of nine dollars per acre, . . . have dwindled to sixty-nine thousand at an average price of less than seven dollars."—*Ibid.*

[6] "The too high prices of other years, sad reverses of fortune, and the consequent failure to fulfil contracts, encouraged, too, beyond any doubt, by hopes of annual relief, have placed our educational funds in their present condition. The first relief-precedent has occasioned all the mischief; for subsequent legislation has grown out of that. If the condition of forfeiture wisely put in the contract had been rigidly enforced, the consequences to individuals would have been less disastrous, and public disappointment less tantalizing. Certainly the forfeiture would at least have ensured prompt settlements."—*Ibid.*, 220.

from the history of the school fund has been screened from close observation, and the matter so glossed over that the whole transaction is made to appear a simple act of justice, the omission of which would have been a blot upon the honor of the State.[1]

Another cloud now loomed up. On some of the loans made to counties and to individuals, no interest had been paid for some time, and it began to appear that the little fund left from the sacrifice was destined to further diminution.[2] There was also found an apparent deficiency in the funds, owing to the looseness with which the accounts had been kept.[3] No charge of dishonesty was made, nor could any such accusation have been maintained for a moment. But the past losses, and the probability that others would occur, drew attention to this phase of the trust-fund problem.

From the organization of the State the Superintendent of Public Instruction had been given charge of two distinct kinds of work. Appointed for his ability as an educator to look after the workings of the schools, he was also obliged to assume the management of a vast body of lands, to recommend laws, to sell lands, and to invest funds,—a work requiring the experience and constant care of a thorough business man. To attend to either of these two duties would have taxed any man; to fulfil both properly was impossible. In the very first year after the office was created, the Governor had suggested the separation of the two lines of labor, and every succeeding Governor in every annual message had advocated the same change. The suggestion had been made at first on the ground simply that the duties imposed on the Superintendent were too arduous, but in 1843 the tone was changed, and the intimation was plainly given that the fund would be managed more carefully if entrusted to other hands.[4] Minor evils undoubtedly existed, for which neither

[1] See, for example, the elaborate defence of the measure in Gregory, School Laws of Michigan, 1859, 6, 7.

[2] "A part of the money already received, it is feared, has been loaned upon insufficient security, and losses from other causes are apprehended."—Governor's Message, Joint Documents, 1843, 12.

[3] *Ibid.*, 216.

[4] "It is believed that the condition both of the common school fund and the

the Superintendent nor the system were directly responsible,[1] but the chief cause of much that had gone wrong was the law imposing upon the Superintendent, whose entire attention was needed in setting in motion an excellent school system, an additional task for which he was not expected to have special qualifications, and certainly had little time.

The Legislature finally recognized this, and in 1843 created the office of Commissioner of Lands, to whom was entrusted the management of the school, university, and other State lands. The books of the Superintendent of Public Instruction were turned over to him, and he was to conduct all sales of lands. Payments of principal and interest on the school or university fund were thereafter to be made to the State Treasurer.[2] A system of accounting between the Auditor, Treasurer, and Commissioner was adopted, which served as a mutual check and preventive of error.

The Commissioner devoted himself arduously to his work. The accounts were straightened out as far as possible, and the records of past transactions put in proper form. The condition of the unsold lands was also inquired into and the discovery made that many of them had been occupied for years by "squatters" who paid no rent. Few, if any, lands had been leased by the Superintendents. In view of these facts the Legislature authorized the Commissioner to instruct the supervisors of the different townships to lease any unsold, improved lands from year to year.[3] In order better to protect the State in case of forfeitures of contracts, all future purchasers were required to pay one fourth of the purchase price at the time of purchase, instead of one tenth as had

university fund might be improved, and their productiveness increased by committing their care to some other officer than the Superintendent of Public Instruction. . . . The interests of the State are not sufficiently protected by existing enactments in relation to the fiscal duties of the Superintendent. . . . The Superintendent makes important sales, and from time to time receives large sums of money, as well of principal as of interest, while no documents exist accessible to other State officers by which the condition of his accounts can be ascertained. Years and years may elapse before even his successor can know his defaults."—Joint Documents, 1843, 14–15.

[1] *Ibid.*, 223, 224. [2] Mich. Laws, 1843, 44–52. [3] Mich. Laws, 1844, 86, 87.

been required before. The improvements on any unsold lands were thereafter to be appraised by the township supervisors, and the minimum price of such lands was to be increased accordingly.[1]

In 1843, and again in 1844, numerous petitions were presented asking for a further reduction of the price of all unsold educational lands. The project was urged in a most plausible form, but the Legislature did not yet permit itself to make another move in this direction. Many of the members were determined that no rash step should be taken to hasten sales when by a little delay the lands would be rapidly taken at the existing prices. They looked upon the rights and privileges of succeeding ages as equally sacred with those of their generation.[2] How soon were these correct but unpopular notions overridden!

In 1845 the Commissioner recommended that the State internal-improvement warrants be received in payment for school lands.[3] As these warrants bore interest the adoption of the suggestion would have enabled the State to redeem its outstanding obligations while it ensured to the schools an income on the fund. This scheme was not formally adopted, but the Treasurer was authorized to pay seven per cent. annual interest on certain treasury notes and scrip taken in payment for school lands.[4] The arrangement was designed to be only temporary,[5] but through it the State drifted into the policy of borrowing the school funds for its own use, and paying annual interest from the treasury upon the loans. At about this time further loans to the counties were suspended.[6]

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[1] *Ibid.*

[2] "It would be far better to hold the lands and thus secure increased value to the fund than to sell them now though we might derive [a greater] amount of interest. In one case we have the increase as a permanent fund for all future time. In the other it is received as interest and distributed throughout the State as fast as received. . . . While we look out well for to-day we must take care that we do not endanger the rights and privileges of those who are to follow us."—From the Report of the Committee on School Lands. House Documents, 1844, No. 10.

[3] Joint Documents, 1846, No. 3.

[4] Mich. Laws, 1845, 148.

[5] Senate Documents, 1846, No. 6.

[6] Of the early loans made to individuals about twelve thousand dollars were never repaid, nor was the interest met. Though the State held mortgages as

By 1850 the State had borrowed the entire primary-school fund and in the new constitution adopted in that year, this procedure was formally accepted as a permanent policy, and the specific taxes levied by the State were applied to the payment of the interest.[1] Whether it is a wise policy for a State which does not need to borrow, to adopt this method of investing its school fund, thereby necessitating perpetual taxation to meet the interest, is a question well worthy of consideration.

In 1846 the minimum price of school lands was reduced to four dollars per acre[2] in the face of a direct showing that the sales at the existing price were increasing each month.[3] The motive for this act is locked in the breasts of those who passed it. There were no new petitions asking for it, and in the following year, before the act came into effect, the Commissioner of the Land Office, whose opinion was based on practical knowledge of the subject, declared that if the price were again raised to five dollars the interests of the fund would be essentially promoted.[4] This protest of the Commissioner was of no avail and the law went into effect.

Since that time only slight changes have been made in the law, though attempts to effect a reduction in price have not been wanting. In 1846 all mineral lands belonging to the schools were reserved from sale,[5] and were offered on three-year leases.[6] In 1863 they were placed on sale at a valuation made by the Governor and State Treasurer.[7] Since 1873 one half the purchase money has, in every sale of school lands, been required at the time of purchase, and for any timber land the Commissioner may require full cash payment at the time of sale. Sales have increased steadily since 1846 with few interruptions, and about two thirds of the lands have been disposed of. As they have all been offered at public auction those still held by the State are, under the

security for the loans, no steps were taken to foreclose them. With the exception of one or two, cancelled by order of the Legislature, the mortgages stand to-day uncancelled on the records.—Smith, 18.

[1] Constitution, 1850, Article XIV., Sec. 1.
[2] Revised Statutes, 1846, 239.
[3] Senate Documents, 1846, No. 23.
[4] Joint Documents, 1847, No. 3.
[5] Mich. Laws, 1846, 92.
[6] *Ibid.*, 274.
[7] Mich. Laws, 1863, 277.

law, subject to private entry at four dollars per acre. The good features of the management of the school sections in Michigan must be obvious; the instances of bad laws and of lax enforcement of good laws have been sufficiently indicated. If the ultimate fund is likely to be much smaller than it should be, the people of Michigan may console themselves with the reflection that many of the older States have fared even worse.

When the swamp lands were granted in 1850 the authorities of Michigan did not consider them valuable or anticipate any revenue from them above the expense of drainage. Accordingly a law was adopted providing for their sale at seventy-five cents an acre, the proceeds of each sale to be used in reclaiming additional lands.[1] As the nature and amount of the grant became better known, it was seen that a large sum of money ought to be realized from it. For several years the successive Governors urged the Legislature to change the law of 1851, raise the price of the lands, and apply some portion of the proceeds to educational uses.[2] These suggestions bore no fruit for several years, but finally in 1857 the previous law was repealed and the lands were ordered sold at a minimum price of five dollars per acre, the purchaser to assume the task of drainage. Of the net proceeds, seventy-five per cent. was to "constitute a part of the primary school fund of the State," while the remainder was to be used as a fund for reclaiming unsold lands. The portion given to the school fund was to be borrowed by the State at seven per cent. interest, for the purpose of paying off other State indebtedness.[3] Why these "wet and overflowed" lands should have been considered worth five dollars an acre, and the school lands valued at but four, is past comprehension.

The educational provision met with hearty approval

[1] Mich. Laws, 1851, 322.

[2] The Agricultural College, the Normal School, and the primary schools were all suggested as proper beneficiaries of the fund. Governor Bingham sought to avoid the co-educational problem by proposing the endowment of a college for the education of young ladies.—Joint Documents, 1856, No. 1.

[3] Mich. Laws, 1857, 234.

throughout the State, but defects were found in the law which prevented the Land Commissioner from making any sales under it.[1] The Commissioner argued that the price had been fixed too high,[2] and the Governor suggested that the proceeds be given to the infant Agricultural College, instead of the primary schools.[3] The law was amended in 1858 and the price reduced to one dollar and a quarter per acre, while only fifty per cent. of the moneys received from sales was to go to the school fund, and this the State was to borrow at five per cent. interest.[4] Though these provisions were far less generous than those of the year before, a large fund would have resulted had this law remained unmodified. From the six million acres the schools would have received about three million dollars, after deducting expenses. Thus far the share of the schools has amounted to about three hundred and sixty-five thousand dollars,[5] and ninety-five per cent. of the lands have been disposed of.[6]

The causes for this enormous shrinkage from the original estimate are simple. The law of 1858 provided that one half the proceeds of cash sales should be used as a school fund. Very few of the lands, however, have been sold for cash, while enormous quantities have been disposed of in such ways that no moneys have entered into the transaction, and in consequence no benefit accrued to the school fund. The schools had no prior or irrevocable claim to the benefit of the grant. No constitutional provision or act of Congress secured any portion of it to the cause of education. It was entirely within the power of the State, by a simple repeal of the law, to use the lands for other purposes not inconsistent with the terms of the grant. So long, however, as the law remained on the statute-book, its spirit as well as letter should have been observed. If the lands not sold for cash had been made to contribute to the material welfare of the State in any degree commensurate with their value, there would be no ground for

[1] Joint Documents, 1857, No. 4, pp. 9, 10. [2] *Ibid.* [3] *Ibid.*, No. 1, p. 3.

[4] This fund is known as the Primary School five per cent. Fund to distinguish it from that derived from the sixteenth sections.

[5] Report Supt. of Pub. Instruction, 1881, xviii.

[6] Circular No. 1, State Land Office, 1883.

complaint. It is, however, a notorious fact that thousands of acres have been practically thrown away. Some of the lands have been used to pay for various needed works of internal improvement, some have been disposed of under a State homestead law, but from a great part of them speculators and private parties have derived more benefit than the State. The method by which this has been accomplished is as simple as it has been disastrous. Wagon roads and ditches were needed in many parts of the State, and the Legislature devised the scheme of paying for them with swamp lands. The construction of a road would be authorized, to be paid for in scrip redeemable in swamp lands at one dollar and a quarter per acre. The recipient could either locate land with the scrip, or could sell the latter to persons who desired to purchase lands. As the land thus located was not a cash sale on the part of the State the school fund under the law derived no benefit from the transaction. Further, as time progressed, so many of these roads were constructed and so much scrip was thrown upon the market, that its value depreciated, often falling to seventy, sixty, and fifty cents on the dollar, and at no time for many years past selling at par, since the supply has always been in excess of the demand. The result has been that when any one has desired to purchase a tract of swamp land, instead of paying cash to the State at the established price per acre, he has bought scrip from some broker at the current price, and with it located his land. In this way he has been enabled to obtain good land at from sixty-five cents to one dollar an acre. Hardly one tenth of the entire grant has been sold at cash sale by the State, so that the school fund has in reality received the proceeds of only about one twentieth of the swamp lands.

As already stated, if Michigan had received benefits in the shape of roads and other improvements equal to the value of the land disposed of, the mere fact that the schools have received so little aid would be no cause for complaint. But the actual state of the case is far otherwise. While some of these improvements have been needed and have been honestly constructed, it is not safe to investigate the majority of

them lest symptoms of jobbery be detected. Dozens of roads have been ordered constructed where there was not at the time, and might not be for a decade or two, any need for them. Then when it came to the construction high prices have been paid for miserably built roads, some of which were in ruins almost before the scrip was located which was issued to pay for them. There can be no question that there has never existed in Michigan another such fertile field for the speculator to labor in, and the opportunity has not been neglected.[1] Let no one infer that the Legislature has been corrupted. At the worst it has only been hoodwinked. The fault lies with the system which permitted lands to be disposed of by such methods. Further, the land was worth far more than one dollar and a quarter an acre. Much of it was pine land worth to-day in the original state as many dollars per acre as it cost the purchaser cents.[2]

In 1869 certain bodies of swamp land, then just patented to the State, were offered for sale at eight dollars an acre. The price of such of these as remained unsold was reduced two dollars at the end of each six months until it reached two dollars an acre, which was fixed as the permanent price.[3] All other unsold swamp lands are offered at one dollar and a quarter per acre.[4]

(*e*) WISCONSIN.

From 1818 until 1836 the region of country now known

[1] The following is a simple illustration of the methods employed. A and B desire to earn an easy penny—perhaps two. A discovers a route where he thinks a new road can be built, and he interests himself in getting the people of the locality to petition the Legislature to order it built. The act is passed. B steps in, gets the contract, builds a poor road, receives pay for a good one, and A and B divide the scrip. Perhaps they even seek for an opportunity to repeat the operation.

[2] A gentleman who is perhaps as familiar with the subject as any one in Michigan informed the writer not long since that, in his opinion, the State might have derived fifty million dollars from the grant.

[3] Mich. Laws, 1869, 164.

[4] *Ibid.* Compare the excellent record of Wisconsin in handling her swamp lands.—*Infra*, 114. For the history of the saline lands of Michigan see page 154, note.

under the name of Wisconsin formed a part of the Territory of Michigan. All laws adopted by the territorial authorities, between those dates, were applicable to the entire country between the Detroit River and Lake Huron on the east, and the Mississippi River on the west. Such of these as pertain to the school lands have already been mentioned.[1] In 1836 the separate Territory of Wisconsin was created, but all previous laws were to remain in force until changed by the legislative authority of the new Territory.[2] In the first territorial Legislature of Wisconsin a resolution was offered asking Congress to give to the Territory, in place of the sixteenth sections, their cash value at the government price of land. Fortunately the wisdom of the Legislature prevented the passage of this foolish proposition. In 1837 provision was made for the election of township commissioners of schools, who in addition to other duties were to lease the school lands. In 1839 a law was enacted "to establish common schools," providing among other things for the election of school inspectors in each township or school district, whose business it should be "to lease the school lands in their respective towns or districts for a term not exceeding three years," the rents to be applied toward the support of local schools.[3] In the following year the powers of the inspectors over school lands were again transferred to the township school commissioners,[4] and the period of the leases was cut down to two years,[5] only to be extended to four years in 1842.[6] In all these cases the rents were to be applied to the support of schools in the townships in which they accrued. Under this law lands were leased until the admission of the Territory as a State in 1848.

By the constitution of the State and the subsequent agreement of the United States[7] the common schools received as an endowment, in addition to sections sixteen, five hundred thousand acres of land,[8] and five per cent. of the net proceeds of all public lands in the State, sold after its ad-

[1] *Supra*, 87. [2] 5 U. S. Stat., 10. [3] Wis. Stat., 1839, 137.
[4] Compare Mich. Laws, 1832; *supra*, 87. [5] Territorial Laws, 1840, 80.
[6] Territorial Laws, 1842, 45. [7] *Supra*, 40.
[8] In most other States these had been granted for internal improvements.

mission. The proceeds arising from these and a few other sources were to constitute a perpetual fund of which only the income was to be used for the purposes specified.[1]

The people of Wisconsin did not repeat the error committed in Michigan of imposing upon the Superintendent of Public Instruction the care and management of the lands and funds. Leaving to that officer the supervision of educational matters, the constitution entrusted the sale of the school and university lands and the investment of the proceeds to a board of commissioners consisting of the Secretary of State, Treasurer, and Attorney-General.[2] The discussion of the perplexing question of leases and sales was also avoided by a constitutional provision that the lands should be sold after their value had been appraised.[3] Thus Wisconsin sought by constitutional restrictions and directions to avoid some of the troubles which other States had experienced from the vacillating policy of uncontrolled and unrestrained legislation.

At the first session of the Legislature steps were taken to locate the five hundred thousand acres,[4] and for the appointment of appraisers in every county to appraise the value of the sixteenth sections and the university lands.[5] Upon the receipt of the report of the appraisers the Legislature ordered the lands to be sold at auction for not less than the appraised value. The land commissioners were authorized to loan the proceeds to individuals, in amounts not exceeding five hundred dollars, for not longer than five years, at seven per cent. interest.[6] In the following year provision was made for the appraisal and sale of the five hundred thousand acres which had been located in 1849. In this law it was provided that any actual settler upon the lands at the time

[1] Constitution, Art. X., Sec. 2.

[2] *Ibid.*, Art. X., Sec. 7.

[3] *Ibid.*, Art. X., Sec. 8.

[4] Wis. Laws, 1848, 42.

[5] *Ibid.*, 123. It was roughly estimated by a Senate committee in this year that the lands situated in the surveyed portion of the State were worth three dollars per acre, but the appraisers in their report give the average value at $3.66 per acre.—Assembly Journal, 1850, 499, 500. Superintendent Root in 1850 estimated that the fund would eventually amount to about five million and a half dollars.—Whitford, 39.

[6] Wis. Laws, 1849, 149.

they were located for the State should have the right to purchase at one dollar and a quarter per acre.[1] This recognition of "squatters" was perhaps no more than equitable when applied to those whose "claim" to the lands was older than that of the State itself, for the latter with proper care might have avoided selecting such lands.

In the following year, however, this right of preëmption was extended to any actual settler on the lands.[2] Whatever moral obligation rested on the State was fully removed by the law granting to previous occupants the right to purchase at the United States Government price regardless of the actual value of the lands. The reasons for throwing the lands open at that price to all who should choose to settle on them are not based on any claims of justice, but on a peculiar State policy. The wisdom of the policy remains to be considered. The whole history of Wisconsin discloses a solicitude on the part of the State to attract immigrants.[3] This disposition, natural in any State, is praiseworthy, provided no other trusts and interests are thereby prejudiced. When, however, a State, for the purpose of increasing her population deliberately parts with lands given to her for other special and important objects, at a price below their actual value, she certainly violates, if not the letter, at least the spirit, of the trust imposed on her. Wisconsin sought and obtained an enormous grant for school purposes, and after obtaining it, by so administering it as to assist in promoting an entirely different object, confessedly sacrificed the interests of the schools.[4]

In 1852 the minimum price of the five hundred thousand acres was fixed at one dollar and twenty-five cents per acre, except where the appraised value was higher. After having been offered for sale at public auction they were to be open to private entry.[5] In the same year certain unappraised

[1] Wis. Laws, 1850, 193. [2] Wis. Laws, 1851, 26. [3] See *infra*, 148, note 6.

[4] Governor Fairchild said in 1871: "The educational funds have suffered this loss in order to hasten the settlement of the localities in which the lands were situated. This is not right. They were held in trust by the State to be disposed of honestly and judiciously for the benefit of the educational funds." —Governor's Message, 1871, 6. [5] Wis. Laws, 1852, 12.

school lands were ordered to be appraised at not less than one dollar and twenty-five cents per acre.[1] By these various measures the Legislature threw into the market far in advance of the needs of the schools the greater part of the school lands in the State, at a day when many of them were in the woods, perhaps miles from any settlement.[2] The only limitation imposed by the State was that the lands should not be appraised at less than the price of government lands. It was not to be expected that the appraisers going into the back country would appraise a school section at a higher value than that at which all the surrounding land could be purchased from the national government, and in most instances they did not.[3] Though, in some instances lands appraised at this low valuation brought at public auction prices far above that valuation, much of the land was offered at auction without being sold. This would seem at first thought, to imply that it was not worth the valuation. But the matter is presented in a different light when it is considered that all lands once offered at auction and not sold are thereafter subject to private sale at the appraised or minimum price.[4] Speculators desiring to purchase blocks of land had simply to ascertain what lands had been offered at auction, and to select from these at the appraised value.

[1] *Ibid.*, 211.

[2] "Great loss has been sustained through the haste with which the school lands have been brought into the market. The lands generally having been situated in the new and unimproved parts of the State," etc.—Report of "Joint Select Committee to Investigate the Offices of the Land Commissioners." Senate Jour., 1856, II., Appendix, 31.

[3] "The lands . . . have seldom been appraised higher than ten shillings per acre—the government price. They have been brought into market at low appraisements and rapidly sold on account of the credit given, whilst the lands of the government remain undisposed of."—*Ibid.*

"Past experience is discouraging of the practicability of obtaining an appraisement regarding singly the increase of the funds to be derived from the sales of these lands."—Report of Land Commissioners, 1860, 38.

[4] "The lands once offered at public auction are by law subject to private entry and the amount to be sold to any one person is not limited . . . since the more rapidly sales can be effected so much sooner will these funds realize the benefit of the endowment. . . . And, if in the end only the appraised value is to be obtained, the sooner the lands are sold the better."—Report of Land Commissioners, 1854, 9.

This state of affairs instead of occasioning the thought that the school fund was being sacrificed, caused alarm lest the lands should be bought by those who would not settle on them, and the population of the State would not increase as was desired.[1]

In 1855 the Legislature decided to check this vast speculation. There were two methods of accomplishing this. The price of the lands might be raised, or a limit might be placed on the amount to be sold to any one purchaser. The former method would stop speculation by making it no longer profitable; the latter, by making it impossible on any large scale. One method would make the ultimate school fund larger; the other would not affect the final fund, while, by retarding the sales, it would make the immediate income smaller. The Legislature in its wisdom chose the latter, and, leaving the price as it stood, permitted sales thereafter to actual settlers only, and to these but a limited quantity might be sold.[2] Again the promotion of immigration had triumphed over the claims of education.

Soon, however, the opinion was expressed that the difficulty had been attacked at the wrong end. Rumors also became rife that the Land Commissioners had not labored entirely in the interests of the fund. The Legislature of 1856, heeding these rumors, appointed a committee to investigate the condition of the lands and funds, the system of laws in force, and the administration of those laws. The committee made a careful investigation, found much to condemn and little to approve in the system itself, and disclosed some "peculiar" transactions in the administration of the affairs of the office.[3] They found that speculators had bought up large quantities in order to reap the profit which should have accrued to the benefit of the fund, thus showing that the policy of offering lands at low prices in order to

[1] "It is for the Legislature to consider whether there are *reasons relative to the promotion of other interests* than those of the school fund, and the system of common schools relying upon it for support, sufficient to induce the adoption of a policy limiting and restricting the sales of these lands."—*Ibid.*

[2] Wis. Laws, 1855, 23.

[3] See the Report in Senate Jour., 1856, II., Appendix.

induce purchasers had not accomplished its object, while it had ruinously reduced the ultimate school revenue.[1] The discovery was also made that State officers and employés of the Land Department, whose official duties gave them an intimate knowledge of the subject, had, previous to the law of 1855, bought up hundreds of acres of these lands, knowing that in a very few years they would be worth twice or thrice the purchase price.[2] Could any better proof that the price was too low be desired? The committee urged that the whole policy of the State be changed, and that, as the schools needed no immediate increase of the fund, the unsold lands be withdrawn from the market until the government lands in their vicinity should have been sold, "and until the further withholding of them would be a serious obstruction to the settlement of the country." They accordingly reported a bill repealing all laws for the sale of school and university lands. Even with this plain statement of facts before them, the Legislature refused to pass the measure, and the sales continued on the old terms.

In April, 1863, the limit on the amount of land which might be bought by a single purchaser was revoked,[3] and on the very next day a law came into force reducing the price of all unsold lands which had once been offered for sale thirty-three per cent., provided the reduction did not carry the price below seventy-five cents per acre.[4] If the lands still unsold had been of a decidedly inferior quality, these two laws would demand no comment. Since, however, there were many good pieces among them, the striking change in policy inaugurated by these provisions gives rise to the suspicion that some other interest than that of the schools was being consulted. Such laws certainly do not bear on their face any evidence that the Legislature had in mind the prime—nay, the sole—object for which these lands

[1] "The facts to be derived from our experience under the present system . . . show that the school lands have not fallen into the hands of those who want them for occupation, but are held by speculators in large quantities, ranging from five to seventy-five thousand acres, thus more effectually retarding their settlement than if held by the State."—*Ibid.*, 31, 32.

[2] *Ibid.*, *passim*. [3] Wis. Laws, 1863, 359. [4] *Ibid.*, 431.

were given. Perhaps, however, the State was merely indicating its desire to get rid of the remaining lands, and have done with the business. There were still a few lands in the remote parts of the State which had not been put upon the market. In 1864 the Legislature fixed the price of these at one dollar and twenty-five cents per acre.[1] Since that day few changes have been made in the terms of sale or in the prices, though the Legislature has more than once been urged to increase the latter and abandon the policy which has taken from the schools a large portion of the value of the grant.[2] The prices in 1872 ranged from a dollar and a quarter to a dollar and a half per acre, but by the statute of 1878 they were fixed at one dollar and one dollar and a quarter per acre,[3] at which point they have since remained.[4] In 1878, and again in 1882, several thousand acres of these lands were withdrawn from the market and devoted to the State Public Park and other purposes.[5] These enactments seem to be clear and unconstitutional diversions of the lands "from the original purposes for which they were granted."[6] But one hundred and sixty-five thousand acres, or about eleven per cent. of the lands, remain unsold.[7]

The money derived from the five per cent. of the proceeds of public land sales in Wisconsin, which, by the State constitution, was made a part of the school fund, has been received from time to time by the proper State officials and incorporated with the proceeds of the land grant. Accord-

[1] Wis. Laws, 1864, 514.

[2] "Heretofore these lands have been sold at too low a price per acre. This is not right. The State should be as prudent in selling these lands as is the individual proprietor, who desires to make the most of them. . . . They are being purchased mainly by speculators, and the actual settlers, when they buy them, will have to pay the dealer a large profit which the funds ought to realize. The fact that speculators are eager to buy plainly shows that the lands are selling for less than their value. Every dollar that they are worth to the settler ought to enure to the funds. I therefore recommend that all these lands be immediately withdrawn from the market, and that they be carefully appraised before any further sales are made."—Governor's Message, 1871, 6.

[3] Revised Statutes, 1878, Ch. 15, Sec. 202–206.

[4] Report of Commissioner of Pub. Lands, Wis., 1882, 4.

[5] Report of Com. of Pub. Lands, 1880, 22, 23.

[6] *Ibid.*

[7] Report, Secretary of State, 1882, 8.

ing to the books of the State, this five per cent. has amounted to $309,035.28.[1] The total school fund of Wisconsin is $2,813,045.58.[2] Deducting the five per cent. fund and $75,000, as a near estimate of the payments to the school fund from fines and escheats,[3] the proceeds of the school lands amount to $2,429,010.30, which gives one dollar and eighty-seven cents as the average price received per acre.

Having thus traced the history of the disposition of the lands, it remains for us to see how the proceeds have been guarded. The law of 1849 provided that the moneys arising from sales should be loaned to individuals in limited sums. This method of investing the funds, while theoretically good for both the State and the borrowers, demands great care and much labor. In Indiana and Illinois such loans are made by local officials, who can know from personal investigation the character of the security, and are held responsible for losses. In Wisconsin, the business was in the hands of a central board, who could not examine every piece of land offered as security, but must rely upon information derived at second-hand. As early as 1852, the Governor intimated that loans had been made upon insufficient security, and expressed his disapproval of the system as apt to result in frequent losses, which, though small in themselves, would, in the aggregate, amount to a large sum.[4] No attention was given to the suggestion and the system continued. The school lands sold rapidly at the low prices, and hundreds of thousands of dollars were loaned by the commissioners to individuals in all parts of the State. Only partial payments were required on the lands sold, and mortgages were taken to secure the balance. For several years no further question was raised concerning these loans, and it was not until 1856 that a definite idea of the condition of the funds was obtained by any one except the com-

[1] Letter of Secretary of State, May 16, 1884. The books of the United States Treasury give the amount as $455,253.73. How the discrepancy arose, and which statement is right, I have been unable to learn. See Document A, 238.

[2] Report, Secretary of State, 1882, 9, 10.

[3] See Appendix, Table A.

[4] Governor's Message, 1852, 21.

missioners. In that year, the special committee to which reference has already been made,[1] in the course of their investigations, found that many losses had occurred, and that not only had many loans been made upon insufficient security, but in some cases this had been done with the connivance of the commissioners themselves.[2] This report did not bring about any change. In 1860 a new set of commissioners came into office and soon called attention to the subject.[3] By this time the losses had amounted to twenty-five per cent. of the loans.[4] The opinion was general that loans on mortgages were unsafe, even when all due precaution was exercised, and that the carelessness and connivance of the commissioners had only increased the losses.[5] It seems inexplicable that a system should have been permitted to remain so long in force which authorized the Commissioners to loan money to strangers upon securities of whose value they had no evidence but the opinion of other strangers.[6] Such investment of capital would never be made by any individual, nor is it conceivable that any trustee of a private estate would be upheld by the courts in such a procedure.[7]

In 1862, on the recommendation of the Commissioners, it was ordered that the school funds be invested in State bonds in preference to all other investments.[8] As Wisconsin, like

[1] *Supra*, 108.

[2] Tens of thousands of dollars of this fund have been embezzled and hundreds of thousands lost or squandered."—Senate Journal, 1856, II., Appendix, 34.

[3] Report of Commissioners of School and University Lands, 1860, 58.

[4] House Journal, 1861, 570. President Whitford says, somewhat ambiguously: "The loss to this fund, during the first ten years of our State administration, was a large part of $732,340."—Whitford, 30.

[5] House Journal, 1861, 570. Also, Report of Commissioners of School and University Lands, 1861, 3.

[6] "Would any prudent capitalist invest his own money in loans to men he did not know—taking security upon lands he never saw, with no better evidence of their value than the appraisement of two men of whom he knew nothing?" —*Ibid.*

[7] "That system of management of a trust fund is radically defective, if not riminally wrong, which provides for investing it in any manner that exposes the fund to inevitable loss without any possibility of restoring it."—*Ibid.*

[8] Wis. Laws, 1862, 53.

nearly all the States, was compelled to borrow large sums at that time for war purposes, all moneys flowing into the school fund were readily invested in these State bonds. Under the circumstances, this was unquestionably the wisest investment possible, and guaranteed the school fund against loss. But the State, soon after the war, ceased borrowing money, and it was possible to obtain State bonds only by buying them at a premium.

So far as practicable this was done, but the school funds soon exceeded the total amount of State indebtedness. The Legislature in 1866 made that portion of its indebtedness which was owned by the school fund a permanent irreducible debt,[1] but wisely declined to borrow the money subsequently flowing into the school and other educational funds, and thereby impose upon the people a perpetual burden of taxation to meet the interest. Accordingly, as some other form of investment must be found, the Commissioners were authorized in 1868 to purchase United States bonds,[2] and in 1871 were further empowered to loan funds to school districts for the purpose of erecting school buildings.[3] This latter method was found to involve some of the same difficulties and delays in payment as had been experienced in the case of individual loans,[4] and has not been extensively employed. In 1872 authority was given to invest in Milwaukee City bonds.[5] This act has been followed by many similar ones, authorizing loans in large sums to various cities and counties in the State.[6] While the laws authorizing loans to individuals were never repealed, few such loans, if any, have been made during the past twenty years. About three fifths of the school fund is loaned to the State itself,—a permanent loan,—and the remainder is invested in United States, city, county, and school bonds, while a few loans to individuals are yet outstanding.[7] This plan of investing in municipal and other public bonds seems to present fewer objections than any other. The time can hardly come when

[1] Wis. Laws, 1866, Chap. 25.
[2] Wis. Laws, 1868, Chap. 111.
[3] Wis. Laws, 1871, Chap. 42.
[4] Report of Com. of Pub. Lands, 1872, 6.
[5] Wis. Laws, 1872, Chap. 118.
[6] See Reports of Land Com., 1873–1883.
[7] Report, Com. of Public Lands, 1883, 23.

good public securities cannot be found and purchased. Such bonds while often bearing low rates of interest are almost absolutely safe and require no care or labor on the part of the State.

Since 1862 the funds have been carefully and safely invested, and had equal wisdom been displayed in the management of the lands, the course of the State during the past twenty years would merit the fullest approbation. Of the period from 1848 to 1862 a far different opinion must be held, and in so far as any comment is required, the words of the Commissioners fully cover the case. "The State is bound for the preservation and application of this trust by every sentiment of gratitude and honor, and moreover by the promptings of interest and of duty to the people of the State themselves and to their posterity. Truth compels the confession that the trust has been most unfaithfully administered. The best of the school lands have been disposed of with eager haste and in disregard of the interest of the funds for which they were dedicated. Then the system adopted for the investment of the capital which has been realized to the funds from the sale of these lands subjects this capital to waste and loss to a fearful extent." [1]

The constitution of the State provided that the moneys arising from all grants whose purpose was not specified should be added to the school fund.[2] Accordingly, when the grant of swamp lands was made it was understood that the surplus proceeds should be so used. In 1856 the minimum price of these lands was fixed at five dollars per acre, except to previous settlers who were permitted to purchase one hundred and sixty acres at one dollar and twenty-five cents per acre. All others could purchase at public auction not to exceed three hundred and twenty acres each. Seventy-five per cent. of the net proceeds was to be placed in the school fund, and twenty-five per cent. was to constitute a drainage fund.[3] The establishment of so high a price and the limitation of the amount purchasable by a single indi-

[1] Joint Documents, 1862; Report of Land Commissioners, 3.
[2] Art X., Sec. 2. [3] Wis. Laws, 1856, 112.

vidual is to be attributed to the report of the committee, already alluded to, which so strongly condemned the policy of low prices and unlimited sales of school lands. This law did not long remain in force. The Commissioners of Lands argued with great plausibility that such high prices were unwise as the lands would not sell, and urged that competition at public auction would easily determine and produce the proper price of each parcel.[1] Notwithstanding that the past unhappy experience had shown that competition did not produce sales at the true value, and that the commissioners were not always disinterested in their advice, the Legislature reduced the minimum price to one dollar and twenty-five cents per acre. All lands were still to be offered at public auction, but any settler might preëmpt at the minimum price.[2]

Two days later, under a provision of the constitution never before carried into effect,[3] the income of twenty-five per cent. of the gross proceeds of the sales was diverted from the common schools and directed to be apportioned "to normal institutes and academies," and to be distributed to such academies and union or high schools as should maintain a normal department or institute.[4] In the following year it was provided that the normal-school fund should consist of twenty-five per cent. of the net proceeds of the lands.[5] At the same time the drainage fund having proved too small another twenty-five per cent. was devoted to that project.[6] This left twenty-five per cent. of the proceeds applicable to the school fund and twenty-five per cent. to the normal-school fund.

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[1] "We are clearly of the opinion that by offering the lands at a public sale where a fair and just competition may be reasonably expected among the purchasers, all the tracts will sell for what they are really worth."—Report of Land Commissioners, 1856, 29. [2] Act of March 5, 1857.

[3] The constitution provided that the income of the school fund should be "exclusively applied to the following objects, to wit: 1. To the support and maintenance of common schools. . . . 2. The residue shall be appropriated to the support and maintenance of academies and normal schools." Until this time there had been no "residue" beyond the needs of the common schools, and as a matter of fact the income has never yet been sufficient to "support and maintain" them.

[4] Wis. Laws, 1857, 93. [5] Wis. Laws, 1858, 194. [6] *Ibid.*, 68.

Sales were conducted in pursuance of this arrangement until 1865, when a radical change was made. Before considering this it must be mentioned that in 1863 the price of all swamp lands once offered for sale at auction and unsold was reduced to seventy-five cents per acre,[1] and in the next year all swamp lands which had not hitherto been exposed to sale were offered at auction at one dollar and twenty-five cents per acre,[2] while the limit on the amount purchasable by a single individual was swept away.[3] The effect of these laws was to hasten the sales and also to throw the lands into the hands of speculators who reaped profits which might have been derived by the State. A greater danger to the fund proceeded, however, from another cause—the appropriation of lands for the building of roads. This system was in vogue in Michigan, where it was flourishing most vigorously. The bills authorizing the construction of these roads were special acts and were often passed at the instigation of the "lobby" and in the interest of private parties.[4]

The Legislature in 1865 devoted itself to the task of making a permanent disposition of the lands, in such a way as to remove the danger of their being squandered and thrown away.[5] As the law stood only the proceeds of sales were pledged to the cause of education. The lands might be given away, or paid out for labor as in Michigan, without conflicting with any of the provisions for the school or normal fund. Now, however, the lands themselves and the proceeds of past sales, including all sums hitherto received in any way for the lands included in the grant, were divided into two equal parts, one of which was to constitute the normal-school fund and the other the drainage fund.[6] Detailed directions were given for the partition of the lands and moneys between the two funds, and it was provided that the lands belonging to the normal-school fund should be sold and the proceeds invested in the same manner as that pro-

[1] Wis. Laws, 1863, 284. Wis. Laws, 1864, 180. [3] Wis. Laws, 1863, 359.

[4] "Local 'grabs' and 'steals' were being continually worked up against the swamp-land fund. One favorite method of attack was the building of State roads, etc., these measures being often only the sharp schemes of private parties."—Salisbury, 44. [5] *Ibid.* [6] Wis. Laws, 1865, 643.

vided for the sale and investment of the school fund. This measure effectually prevented any future inroads upon the lands devoted to education, and afforded an almost certain prospect that the ultimate fund would be large since the original grant was over three million acres.

As the result of the division the normal-school fund received about six hundred thousand dollars in cash and obligations on land contracts, and about five hundred thousand acres of land already on sale, "with other lands not yet in the market."[1] These last were swamp lands which the United States Government had not yet patented to the State, and comprised many thousand of acres. Many of these have since been turned over to the State authorities. In 1865 the prices ranged from seventy-five cents to one dollar and twenty-five cents per acre, and by numerous special acts passed since then, the prices in certain counties have been reduced to fifty cents per acre, presumably because of the inferior quality of the lands. In 1882 there remained unsold about four hundred and seventy-five thousand acres,[2] while the fund realized from lands sold amounted to $1,147,071.58,[3] invested in State certificates, United States, and city bonds, and loans to counties and individuals. The management of this fund has been excellent and presents a striking contrast to that of the other educational funds of the State. The prices at which the lands are held to-day are, however, too low, and should be raised. Many of them are rapidly increasing in value, and the benefit of the increase should certainly accrue to the fund.[4]

B.—SEMINARY OR UNIVERSITY LANDS.

(*a*) OHIO.

The two townships stipulated for in the contract between the United States and the Ohio Company[5] in 1787 "for the support of a literary institution" were located in 1795.[6] By the

[1] Salisbury, 48. [2] Report, Land Commissioners, 1882, 6. [3] *Ibid.*, 24.
[4] See the suggestions of the Land Commissioners in their report for 1882, 28, 29. [5] *Supra*, 17.
[6] Walker, 311. The lands selected were the present townships of Athens and Alexander in Athens County, Ohio.

terms of the contract [1] these lands were to be applied to the intended object in such manner as the Legislature of the State wherein the townships lay might think proper to direct. In 1802 the territorial Legislature chartered the American Western University in the town of Athens, and vested the lands in the corporation "for the sole use, benefit, and support of the University," granting to the trustees the power to lease them for any period not exceeding twenty-one years.[2] With the object of attracting lessees the lands and all improvements made on them were declared forever exempt from territorial and State taxation. Though the trustees of the proposed university were named in the act they appear to have taken no steps to perfect the organization or to utilize the grant.

At the first session of the State Legislature in 1803, commissioners were appointed to appraise the lands and to report the result of their labors.[3] In 1804, upon the receipt of this report, the Legislature, on the 18th of February, repealed the law chartering the American Western University, and in its place made provision for the establishment of Ohio University at Athens.[4] To this institution the two townships were given [5] as an endowment, and minute directions were laid down for their management. The trustees were to appoint three disinterested freeholders to subdivide, estimate, and value the lands in their original and unimproved state.[6] After this valuation was made, and after four weeks' notice "in the newspaper printed in Marietta," the trustees were to give to any applicants leases for ninety years, renewable forever, on a yearly rent of six per cent. on the amount of the valuation. The land so leased was to be subject to a revaluation at the end of thirty-five years, and again at the

[1] Walker, Appendix C.

[2] *Apud* Walker, 312.

[3] Act of April 16, 1803.

[4] 2 Ohio Laws, 193.

[5] Several of the trustees appointed for this university were among those named for the first one, and the new university was really the successor of the other.

[6] Some of them had been settled upon in the territorial days by pioneers who had made improvements and erected buildings. These settlers the Legislature designed to protect by requiring the appraisal to cover only the original value of the lands, and permitting the occupant to lease at that valuation.

expiration of sixty years, on each of which valuations the lessee was to pay a rent of six per cent. until the next was made. At the end of ninety years a final appraisal was to be made, which should thereafter serve as the basis of the rent. The State was never to tax the lands, but the university authorities were given power to lay an additional yearly rent equal to the amount of State tax "imposed on property of like description." This last provision was in effect to give to the university the State taxes upon those two townships, though the State did not undertake to collect them.

This law was just and equitable in all respects, and during the ensuing year about twenty thousand acres, or nearly one half the entire grant, were applied for by occupants and others.[1] This certainly seemed a good beginning for the young institution. Governor Tiffin, in his message to the next General Assembly, stated that the prospects were flattering, but added that "the settlers on these lands were induced to apply for leases under the impression that the Legislature would review the law and be governed by a more liberal policy."[2] The revaluation clause was the feature of the law which created the notion of illiberality. The wisdom of such provisions has already been discussed. But the Governor so far respected the "impression" of the settlers as to urge a modification of the law.[3] As the Governor was an *ex-officio* trustee of the university the Legislature naturally assumed that his opinions on this subject were worthy of consideration, and accordingly proceeded to modify the law of the previous year. It was now enacted[4] that the land should be appraised by men named in the law "at the present real value in its original and uncultivated state." The trustees were then to lease the same to any

[1] Walker, 332, Note.

[2] 3 House Jour., 8.

[3] "Should it be thought that these lands ought to be valued at a generous [to whom?] price once for all, and leases be authorized to issue upon the payment of the legal interest yearly, there can be no doubt that they would soon all be occupied, and from the sales of the town and outlots a sufficient sum would be raised to erect such buildings as may be immediately wanted, and that the rest [rents?] of the lands and lots would be sufficient to support the university and answer every purpose for which the donation was originally made."—*Ibid.*

[4] 3 Ohio Laws, 79.

persons, "who have applied or may apply," for ninety-nine years, with the privilege of renewal, at an annual rent of six per cent. on the appraised valuation. But no lands were to be leased on a valuation of less than one dollar and seventy-five cents per acre.

The law contained no direct provision for revaluations at any future time, nor did it expressly do away with them, simply declaring that "so much of the act passed the 18th day of February, 1804, as is contrary to this act," was thereby repealed. Were it not for the passage quoted from the Governor's message, there would seem to be no occasion for even a suspicion that there was a thought of repealing the only clause in the first law which really protected the interests of the university. In later years this question, whether the lands leased under the law of 1805 were subject to revaluation, occasioned a long and serious struggle between the university and lessees. In 1807 the Legislature repealed the clause fixing the minimum value of the lands, and authorized the trustees to lease all lands at the appraised value, whatever it might be.[1] All were soon leased, but the trustees experienced such difficulty in collecting the rents that for several years the Legislature authorized them to receive payment in produce.[2] In 1826, when the State adopted the policy of selling its educational lands, the trustees were authorized to sell any unleased lands,[3] and also to convey in fee-simple any leased lands upon payment by the lessee of the amount at which the land was valued when it was leased.[4] The impolicy of any provision of this nature has already been shown.[5] Under this law about two thousand acres have been sold and conveyed in fee.[6]

In 1841 the trustees took steps to revalue the lands in accordance with the law of 1804, which required a revaluation, at the expiration of thirty-five years. The lessees objected on the ground that this provision had been repealed by the later law of 1805. An issue was made upon a test case

[1] 5 Ohio Laws, 85. [2] Walker, 338.

[3] A few lands had reverted to the university through the failure of the lessees to pay the rent.

[4] 24 Ohio Laws, 52. [5] *Supra*, 54. [6] Education in Ohio, 194.

which was argued before the Supreme Court of the State. The decision of the court was that, so far as the provision for revaluation was concerned, the two laws were not inconsistent, hence that the lands were held subject to revaluation.[1] Defeated in the courts, the lessees besought the Legislature for relief,[2] and with complete success, in spite of the fact that a majority of the committee to whom the matter was referred reported adversely. An act was passed declaring that the intent of the act of 1805 "was that the leases granted under and by virtue of said act, and the one to which that was an amendment, should not be subject to a revaluation at any time thereafter."[3] The pressure brought to bear upon the Legislature in behalf of the lessees was enormous, though there is no evidence that any but legitimate arguments were used upon the members. The lobby in behalf of the bill is said to have been almost unrivalled in the history of the State.[4] In consequence of this strange though unfortunately legal interference of the Legislature no revaluations have been made, and nearly two townships of the choicest land in the State are rented upon a valuation made seventy-five years ago when Ohio was a comparative wilderness. The rent from forty-four thousand acres is but forty-two hundred dollars per year.[5] "The aggregate valuation of the university lands for taxation is $1,060,000, while the valuation for rental is scarcely $70,000."[6]

[1] McVey *et al vs.* Ohio University, 11 Ohio Reports, 134.

[2] It has recently been brought to my attention that the struggle of the lessees of these lands against a revaluation and higher rent bore many resemblances to the present Irish agitation against rack-rents. It is stated that the lessees, accustomed for thirty years to pay a merely nominal rent of from 10½ to 12 cents per acre, would not submit to a reappraisal; that even after the legality of the reappraisal had been affirmed by the Supreme Court, it was impossible to collect the additional rent; that whenever a suit was instituted the jury, in utter defiance of their oath, the law, and the evidence would uniformly render a verdict in favor of the lessee; and that the bill mentioned above was lobbied through the Legislature and put an end to the contest.

[3] 41 Ohio Laws, Local, 144.

[4] The history of the case, with all the memorials and evidence of all kinds bearing on the question, is found in a small volume entitled "Revaluation of the Lands of Ohio University." Published for the lessees by N. H. Van Vorhees, Athens, O., 1845.

[5] Letter from Pres. W. H. Scott, April 30, 1883.

[6] Education in Ohio, 198.

The authority conferred upon the trustees in 1804 to collect an additional rent equal to the State taxes levied on similar property has not been exercised until recently. In 1844 the trustees asked the Legislature to enforce the collection of this rent, but their request was not granted. In 1875, after the occupants had for nearly three quarters of a century escaped from State taxation and any burden in lieu thereof, the Legislature passed an act requiring the trustees to demand and collect the additional rent for the support of the university.[1] In the following year the lessees, remembering their success in annulling the revaluation clause, petitioned the Legislature for relief from the tax clause, but all relief was refused. In June, 1876, the trustees took measures to collect this rent. The lessees applied to the courts for an injunction to restrain the trustees from taking further action, but failed in all the State courts. The matter is now before the United States Supreme Court for decision. In the meantime, however, the rent is regularly collected, and its average amount is not far from three thousand dollars.[2] The total annual income from this grant of two townships is thus but about seven thousand two hundred dollars. Had the Legislature in 1843 resisted the importunities of the lessees, and refused to interfere with the laws as expounded by the highest judicial authority in the State, and had the trustees insisted on their rights, there is every reason to believe that the endowment of the university would be more than ten times its present size. At the same time, it is the neglect of the trustees alone that the rent in lieu of State taxes, which is unquestionably the property of the university, has not been regularly collected from the outset.

The State of Ohio also received the benefit of another grant of lands for a college. By the contract between the United States and John Cleves Symmes one township was to be set apart for a seminary of learning.[3] This reservation, confirmed by law in 1792,[4] was secured to Ohio upon its

[1] 72 Ohio Laws, 177.
[2] Letter from Pres. W. H. Scott, April 30, 1883.
[3] *Supra*, 18.
[4] 1 U. S. Stat., 266.

admission as a State. Commissioners were immediately appointed by the State to locate the land. They selected what is now the township of Oxford in Butler County.

In 1809 the Legislature chartered Miami University and vested the seminary township in the trustees of the new institution,[1] permitting them to use in the support of the university only the income arising from the lands. The terms of the law were peculiar, but in effect the trustees were to lease the property in tracts of not more than one hundred and sixty acres for ninety-nine years to the highest bidder, but at a valuation of not less than two dollars per acre, the lessees to pay an annual rent of six per cent. on the amount of their bid. The leases were to be held subject to a revaluation every fifteen years, the land being appraised in each instance as if in an unimproved state. These provisions were similar to those for the lease of school lands, and embody the best form of the long-lease system, affording to the university the benefit of any increase in the value of the bare, unimproved land.

In less than a year after this law was passed the Legislature destroyed all its possible benefits by repealing so much of it "as required a revaluation every fifteen years."[2] By this change the lands were brought into the same condition with so many of the other educational lands of Ohio. At a single step the Legislature had gone from one of the best to the worst possible method of disposing of them—a step which proved the ruin of the university. A careful analysis, made a few years since,[3] of the membership of the two Legislatures which passed these laws, showed that the same men composed a majority in each. The only valid explanation of their contradictory action is that they were eager to lease the lands immediately in order to get the college started, and that during ten months under the first law only a small part of the township had been leased.[4]

The mistaken notion of the Legislature must be obvious to all. With the Ohio University in operation the demand

[1] 7 Ohio Laws, 184.
[2] 8 Ohio Laws, 95.
[3] Education in Ohio, 201.
[4] *Ibid.*

for higher education in the infant State was not so great as to require the immediate establishment of a second college. Whatever may have been true concerning the common schools, an institution of learning of the higher sort, which might live for centuries, could well afford to delay its opening for a few years if by so doing its permanent endowment would be increased. Even as it was, the college did not throw open its doors until 1824. In a short time all its lands might have been disposed of under the first law, and at the end of each fifteen years its income would have been increased by a large amount. Under the law of 1810 the entire township was almost immediately leased, and with a paltry income of five thousand six hundred dollars per year from its endowment of twenty-three thousand acres of land,[1] the university dragged out a miserable existence until 1873, when for lack of means its doors were closed.

(*b*) INDIANA.

The land reserved in 1804 for a seminary of learning in the Vincennes land district of Indiana Territory, was located in 1806 by the Secretary of the United States Treasury, who set apart for that purpose one of the townships in Gibson County. In the same year the territorial Legislature incorporated Vincennes University, and in the following year by a supplementary act provided "that the trustees . . . should be legally authorized to sell . . . any quantity not exceeding four thousand acres" of the seminary township "for the purpose of putting into immediate use the said university, and to have on rent the remaining part of said township to the best advantage for the use of said . . . university."[2] This act assumed that the territorial Legislature possessed full powers over the lands, though Congress had merely ordered that they be "reserved from sale" by the United States for the use of a seminary of learning.[3] Immediately after the act of incorporation was passed the institution was organized.

The trustees soon sold four thousand one hundred and

[1] Education in Ohio, 201. This income represents ninety-three thousand dollars as the valuation of the lands, including many town and village lots.

[2] Acts of Nov. 29, 1806, and Sept. 17, 1807. [3] 2 U. S. Stat., 279.

thirty-six acres[1] and rented portions of the remainder. With the proceeds of the sales a building was erected for the university. Congress, in 1816, by special act confirmed the titles of those who had purchased from the trustees.[2] The fact that such a measure was deemed necessary to protect the purchasers proves that, whatever other powers over the lands had been vested in the territorial Legislature, the right to sell had not been given them, and hence that the trustees had no such right. Even had this power been clearly in the hands of the trustees, it did not by the conditions under which Congress made the reservation carry with it any right to use the principal for the buildings or expenses of the institution. Only the income was thus legally available under any circumstances. This use of the fund was, however, never questioned so far as to cause any restitution to be made.[3]

When Indiana became a State in 1816 an additional township of land was given to the State for the use of an institution for higher education. The Legislature in 1820 established a State seminary at Bloomington, and appropriated for its maintenance the income arising from this second township, which had been located in Monroe County.[4] The income was to be obtained by leasing the lands. At the same session of the Legislature a resolution was adopted touching the Gibson County township, which, without referring to Vincennes University, assumed the grant to that institution by the territorial Legislature to be null and void. The resolution appointed a superintendent to lease the lands in that township "which are now under the control of the State of Indiana," and to collect all arrears of rent "due said State."[5] The superintendent was made accountable to the Legislature and was paid by the State. Two years later commissioners were appointed to sell the "remainder" of these lands[6] at public auction for not less than five dollars per acre, and to

[1] Document F. [2] 6 U. S. Stat., 171.

[3] See *infra*, 143 and 149, for similar attempts to misapply the seminary fund in Michigan and Wisconsin. [4] Indiana Laws, 1820, 82. [5] *Ibid.*, 160.

[6] This meant all but the four thousand acres sold in 1807 by Vincennes University.

deposit the proceeds in the State treasury for the benefit of the State seminary.[1] This is the earliest instance in the Northwest Territory where the system of leasing educational lands was formally abandoned in favor of the method since adopted by the five States. The supposed advantages of the latter system as applicable to all educational lands had been set before the Legislature by an elaborate report of a special committee, submitted a few days before the passage of this law.[2] The Legislature, in devoting the income to the State seminary, did not venture, as they had two years before, to ignore the previous charter of Vincennes University. The act plainly declared that the endowment was bestowed upon the State seminary because the corporation of Vincennes University "had expired through the negligence of its members." The ground for this assertion was that the trustees had neglected to take the necessary steps for keeping good their number, and the existing trustees were fewer than were required by their charter in order to hold legal meetings or transact business. Vincennes University was soon closed for lack of funds to support it.

Thus the State seminary came into possession of both townships as an endowment fund, with the exception of the four thousand acres already sold. During the next fifteen or twenty years, with no thought of further trouble from Vincennes University, the Legislature passed various measures to secure a steady income for the seminary. In 1825 the Monroe County lands were ordered to be leased for two years at public auction at an annual rent of not less than sixty-two and one half cents per acre.[3] All the rents and profits of the lands and the interest upon the fund then in the State treasury from the sales of Gibson County lands were appropriated to the seminary. By a law adopted two years later all unsold lands in the two townships were divided into three classes, with minimum prices of three dollars and

[1] Indiana Laws, 1822, 111. [2] Senate Jour. Indiana, 1821–22, Appendix.

[3] Indiana Laws, 1825, 97. The Governor had called attention to the faults of existing leases made by the seminary trustees, and had suggested that the Legislature "inquire whether they [the seminary lands] are not daily diminishing in value."—Senate Jour., 1825, 29.

a half, two and a quarter, and one and a quarter respectively. With the exception of three sections near Bloomington they were to be offered at public auction within a year. The proceeds were to be paid into the State treasury, and all interest accruing was to be turned over to the trustees "to an amount not exceeding the pay-roll of the teachers."[1] Hitherto the State had paid the interest on this fund, but in 1828 a State loan-office was established for the purpose of lending the moneys to citizens of Indiana on real-estate mortgages for not more than five years, at six per cent. interest.[2]

In 1828, by a modification of its charter, the seminary became the College of Indiana, and the three sections near Bloomington reserved from sale in 1827 were placed under the immediate control of the trustees.[3] By other laws the public sales were continued on the same terms as before, while all lands not sold at auction were thrown open to private entry at the minimum prices already established.[4] In 1830 these prices were reduced to two dollars and a half, one and a half, and seventy-five cents in the three grades.[5] In the same year the Legislature authorized the trustees to sell one of the three reserved sections at not less than five dollars per acre, and to use the proceeds for purchasing apparatus for the college.[6] Similar disposition was afterwards made of the other two sections. It is hardly necessary to call attention to the illegality of such uses of the principal of the fund. In 1843 the style of the institution was changed to Indiana University,[7] under which name it has since been known. By that time the lands were nearly all disposed of and the university was deriving an income of perhaps five thousand dollars from the proceeds of forty-two thousand acres.[8] It is needless to say that the fund would have been twice or thrice as large had a proper system of leasing been maintained and

[1] Indiana Laws, 1827, 95.
[2] Indiana Laws, 1828, 127.
[3] Indiana Laws, 1828, 115.
[4] Act of January 16, 1828. Also Indiana Laws, 1829, 140.
[5] Indiana Laws, 1830, 167.
[6] *Ibid.*, 166.
[7] Revised Stat., 1843, 299.
[8] The fund itself in 1846 amounted to $59,770, exclusive of balances still due from purchasers.—Auditor's Report, 1845.

no sales made until government lands had become scarce in the vicinity.

Troubles now arose from an unexpected cause. After Vincennes University was closed in 1824 no attempt at a reorganization was made for some years. In 1838 the Legislature made provision for supplying the vacancies in the board of trustees,[1] thus calling the old corporation again into activity. A clause was inserted in the act which was intended to prevent the renewal of any claim to the seminary township taken from the institution in 1822. As soon, however, as the other business of the new board permitted, steps were taken for the recovery of the lands. In 1844, suits were begun against the occupants and purchasers of those which had been sold since 1822. Before a decision had been rendered in any of the cases the State assumed all responsibility for the sales and authorized the trustees to bring suit against the State to determine where the title to the lands lay.[2] The case passed through various courts, and was finally argued in the Supreme Court of the United States, where in 1852 a decision was rendered in favor of the university.[3]

It now seemed inevitable that the State University must lose nearly one half of its small endowment, but a series of events followed which proved that the litigation was but a blessing in disguise for both institutions. The State having already assumed the responsibility in the matter, the Legislature satisfied the claims of Vincennes University by direct payment of the proper sum from the State treasury, leaving the endowment of the State University intact.[4] In addition to this, Congress, to which an appeal for relief had been

[1] Act of February 17, 1838.

[2] Act of January 17, 1846.

[3] Vincennes University *vs.* State of Indiana, 14 Howard, 268. The court declared that Vincennes University had come into legal possession of the land in 1807; that the Legislature could not divest its title to the land and confer it upon any other body politic, and that when the board was reorganized under the act of 1838 all its former rights and powers were restored. Incidentally it was held that by the terms of the act of Congress in 1816 (*Supra*, 35) the United States Government had vested only the second township in the State, thus recognizing the right of Vincennes University to the first.

[4] Indiana Laws, 1855, 50.

made while the suit was pending, granted to the State for the benefit of Indiana University an amount of land equal to that to which Vincennes had proved her title.[1] Still further, Congress, in 1852, granted to the State four thousand one hundred and thirty-six acres for the same purpose in lieu of those sold by the trustees of Vincennes University previous to 1816.[2]

Thus the State University lost nothing by the litigation, but obtained, in addition to what it possessed before, more than a township of new lands. On the other hand, Vincennes University received from the State $66,585 in payment of its claims.[3] The annual income from this sum, which is more than the bare proceeds of the land grant, amounts to about four thousand dollars.[4] In addition to this, she received in 1873 a direct gift from Congress of all the vacant and unclaimed lands in Knox County, Indiana.[5] These lands, amounting to a few thousand acres, are under the immediate control of the trustees. Their proceeds will add several thousand dollars to the endowment fund of the college.[6]

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[1] 10 U. S. Stat., 267.

[2] 10 U. S. Stat., 14. This is one of the choicest passages in the whole history of educational land-grants. After the question of the title to the township was already in the lower courts, the Legislature of Indiana petitioned Congress for this grant, affirming that "the president and trustees of Vincennes University *without any color of title* sold four thousand acres" of the original township which was "vested in the State of Indiana." (Indiana Laws, 1849, 151. Senate Miscellanies, 1st Session, 31st Cong., No. 40.) This disingenuous statement, assuming the very points at issue in the courts, and carefully disguising the truth, completely deceived Congress. The Senate Committee on Public Lands reported favorably, and their report shows how far the deception extended. "It does not appear," runs the report, "that the territorial authorities of Indiana in any manner consented to the sale of the land by the trustees of the Vincennes University." (Document G.) What the true state of the case was we have already seen, but by forestalling the decision of the court, and by concealing important facts, the State obtained for the university a clear "bonus" of four thousand acres.

[3] This sum included interest on the funds from the date of the sales of the lands. The university received actually but $41,585, its attorney having retained $25,000 for his services in the case, of which sum a suit failed to dispossess him.—Schools of Indiana, 135.

[4] *Ibid.*, 136. [5] 17 U. S. Stat., 614. [6] Schools of Indiana, 135.

The additional lands received in 1852 and 1854 for the State University, were selected in small tracts in various parts of the State. In 1859 the trustees of the university were ordered to proceed to the appraisal of the lands; after the appraisal was made, the auditor of each county where the lands were situated was to sell them whenever the trustees ordered. They were first to be offered at auction at not less than the appraised value, and those not thus sold were subject to private entry.[1] The proceeds were deposited in the State treasury, and loaned out at interest. It is difficult, and perhaps needless, to give any exact statements of the proceedings with reference to these lands. Judging from the small fund derived from them, the appraisers rated them at low valuations. In spite of this, they have not all been sold, and in 1882 the State Auditor urged that they were held at too high prices.[2] The whole system of managing the State lands, and keeping the records in Indiana, has, until recently, been loose and faulty. As a result, it is impossible to tell how many acres are still owned by the university. According to the records, there remain unpatented 8,526 acres,[3] but of these many have been sold, for which the university has received the final payments. The State has neglected to issue, or the purchasers have failed to demand, the proper patents.[4] Until the purchasers shall respond to the request of the officials, and present their certificates of payment for the lands, there are no means of ascertaining the exact state of affairs. How such a loose system of managing trust lands can have existed and been tolerated seems inexplicable.

The proceeds of all the grants have been invested since 1828 in small loans to individuals, the loans being secured by real-estate mortgages. The difficulties and dangers of this method of investing trust funds where the loans are not

[1] Indiana Laws, 1859, 234.

[2] "Many of these lands cannot be sold. . . . The appraisement . . . was made when the price of real estate was much higher than at present (?); and in consequence of the depreciation in value thereof, the county officers are unable to dispose of them."—Auditor's Report, 1882, 110.

[3] *Ibid.*, 111–115.

[4] *Ibid.*, 110.

made by local officers, have already been mentioned. Indiana did not escape these dangers and consequent losses. In 1845 many of the borrowers had ceased paying the interest on their loans, and in some cases the security was found insufficient for the amount loaned. It was discovered that in the times of high prices preceding the panic of 1837, loans had been made up to the full estimated value of the land offered as security. The value subsequently falling off, the full amount of many such loans could not be recovered by the State.[1] The system was, however, continued, and the entire productive fund of the university is invested in loans to individuals. Since 1855 the Auditor and Treasurer of the State have jointly received five per cent. of the income of the fund for managing it.[2] The numerous small loans have required much of their time, but Indiana is rich enough to follow the example of her sister States, and to pay for this labor from the State treasury. The proceeds of the sixty thousand acres thus far sold amount to $139,036.74,[3] being an average of about two dollars and thirty cents per acre for lands, many of which are inferior to none in the State.

(*c*) ILLINOIS.

The township of land reserved in 1804 for a seminary of learning in the Kaskaskia land district was set apart in 1816 for the Territory of Illinois. The territorial Legislature appears to have taken no measures to establish a seminary, or utilize the grant. When Illinois became a State, in 1818, the second township was granted to her for the same purpose, with the privilege of locating it in detached tracts of small area. This insured the selection of better lands than where the township was located as a single tract. None of the lands were selected until 1824, and some of them as late

[1] "Many of these forfeited lands were mortgaged at their estimated value in 1835–6 and 7, and are now far from being a sufficient security for the amount loaned. There is but little prospect that any considerable portion of them can be disposed of for the full amount due."—Auditor's Report, 1845. See Indiana Laws, 1846, Appendix.

[2] Indiana Laws, 1855, 203.

[3] Auditor's Report, 1882, 121.

as 1830. In January, 1829,[1] the Legislature authorized the sale of the selected lands at public auction. A minimum price of one dollar and twenty-five cents per acre was put upon them, and if not sold at the auction, they could be purchased at any time thereafter at the minimum price. Settlers were given the right of preëmption at that price.[2]

The first township the Legislature had in 1821 ordered the State Auditor to lease.[3] When he took steps to carry out this instruction, he found that the township was of such poor quality that it was impossible to lease it. Judging from the descriptions given of the land, it must have been selected after a glance at some map, not from an examination of the country itself.[4] In 1829, the Legislature, in the hope of obtaining a better township addressed a memorial to Congress representing that the township would always be "totally valueless for a seminary of learning," and asking the privilege of exchanging it for an equal quantity of land to be selected in small tracts.[5] Congress granted the prayer[6] in 1831, and the State made new selections, which are among the best farming lands in Illinois.[7] Such was the haste to dispose of the lands, that before Congress had consented to the exchange, a State law was passed providing for their sale on the same terms as those prescribed in the case of the other seminary lands.[8] All but one sixteenth of the entire seventy-two sections were soon sold, and but three tracts were sold for more than the minimum price.[7] Indeed, had the Legislature determined that the lands should not sell for more than the minimum price, they could not have carried out their determination more successfully. Under the law all were offered at auction at one time, and those not disposed of then were purchasable at any subse-

[1] Pillsbury, cxxxii., cxxxiii. To this admirable paper I am indebted for many details. [2] Illinois Laws, 1829, 158. [3] Illinois Laws, 1821, 60.

[4] "A large part of this township of land is now found to be filled with lakes and swamps, while other parts of it are barren and sterile, so that it has been found impracticable to lease the same, or apply it in any manner to the objects contemplated in the grant."—State Papers, 6 Public Lands, 14.

[5] *Ibid.*, 13. [6] 3 U. S. Stat., 475. [7] Pillsbury, cxxxiii.
[8] Illinois Laws, 1831, 171.

quent time for one dollar and twenty-five cents per acre. As there was no demand for so many lands, there was little competition at the auction. Had only a small amount been offered for sale at one time, nothing but a combination among purchasers could have prevented competition and a consequent increase in the prices obtained.

The terrible wastefulness in selling these selected lands, under any circumstances, at the lowest price at which lands could be bought in the United States is apparent. In the light of accompanying legislation, and certain other facts, the transaction assumes even a worse complexion. The sales were not ordered because there was in existence any seminary of learning which needed for its support the income from the fund; nor can proof be found that the Legislature which fixed the price and authorized the sales contemplated the immediate organization of any institution capable of taking the benefit of the grant. Certainly none was established until a full quarter of a century later. The truth seems to be that the Legislature desired the use of the fund for other purposes, and established such prices for the lands as would result in speedy sales.

To understand the designs of the Legislature it is necessary to note the financial condition of the State. Since 1821, Illinois had been suffering all the evils resulting from an unlimited issue of paper currency.[1] A weight of debt had been thrown upon the people. Taxes had, in consequence, become burdensome to them, and a Legislature that ventured to increase taxation was overwhelmed with reproach. As a result, all sorts of shifts were resorted to by the legislators to lessen taxes and avoid unpopularity. Among other schemes occurred the expedient of selling the seminary lands and borrowing the money to meet the current expenses of the government.[2] We have just seen how the lands were offered at prices intended to force speedy sales, in utter disregard of their actual value, and when no college was organized to utilize the fund. It remains to show how the State used the proceeds. The Legislature did not wish to make their game

[1] Edwards, 175 ; Sumner, 122.

[2] Ford, 79.

too evident, and the law which authorized the sales contained an innocent provision constituting four of the State officers a board of commissioners to take charge of the money and invest it in "stocks or funds."[1] Then by a separate act the Governor was instructed to borrow the school fund and the proceeds of the seminary lands at six per cent. per annum, the interest to be added to the principal until needed.[2] This last clause is the key to the whole plot. Here was a method of borrowing money without paying any immediate interest. At the end of each year the proper sum was added to the fund *on the books* and the whole reckoned as principal the next year. So long as the Legislature did not see fit to establish a college to take the benefit of the fund, so long would it be able to use the money and throw upon succeeding generations the burden of paying all the interest.

In 1835 it was provided that the interest instead of being added to the principal should thereafter be loaned to the school fund for distribution over the State.[3] This arrangement lasted until 1857, when finally the State Normal University was established and the income of the fund given to it.[4] Thus it appears that the first lands were sold twenty-eight years before the fund was applied to its proper use. For twenty-two years of that time the interest was "loaned" to the school fund, and the loan, amounting in 1857 to seventy thousand dollars, has never been repaid; that is, from 1835 to 1857 the seminary fund was illegally diverted to the use of the common schools. There may have been reasons why the schools should borrow money,[5] but there can be no valid ground for permitting a trust fund to be diverted from its true object with no thought of reparation.

In 1861, the four and one half sections still unsold were given to the Illinois Agricultural College. They were soon disposed of for fifty-eight thousand dollars, or about twenty dollars per acre. The proceeds were mismanaged by the college, and in 1872 the State took steps through the

[1] Illinois Laws, 1829, 158. [2] *Ibid.*, 118. [3] Illinois Laws, 1835, 23.
[4] Illinois Laws, 1857, 300. [5] See Pillsbury, cxxxiv.

courts to recover the fund on the ground that the college had not used it according to the terms of the grant! The suit resulted in favor of the State, and on the judgment a quantity of land has been secured which has since been sold for nine thousand dollars. This sum should be added to the seminary fund, though it does not yet appear there on the books of the State.[1] The fund amounts to $59,838.72, and the annual income is $3,590.32.[2]

This fund is fairly entitled to the distinction of having been the worst-abused educational trust fund in the Northwest Territory. Other States have sold their lands at as low prices, and some have hurried the sales in order to afford an immediate income for the beneficiary of the trust; Illinois alone has sacrificed the lands thirty years before the beneficiary of the trust was created. Other States have borrowed the funds after the lands were sold; Illinois alone has sold the lands in order to borrow the proceeds. Other States have lost portions of the principal and interest; Illinois alone has by law used the income for other purposes than those intended in the grant. Had the lands been leased until 1857, when the grant was first legitimately used, and then sold, they would have produced a fund of more than eight hundred thousand dollars.[3]

In addition to the two townships one half of one per cent. of the proceeds of the sales of public lands within the State was given to the State for a college or university. The history of this fund up to 1835 has already been related in connection with that of the school funds.[4] In 1836 it was ordered that the interest instead of being added to the principal, as had been the custom, should thereafter, like the interest on the seminary fund, be loaned to the schools.[5] This continued until 1857, when the fund was given as an endowment to the State Normal University.

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[1] *Ibid.*

[2] Illinois School Report, 1882, cxliii. From 1839 to 1873 one twenty-fourth of the income was given to the State Deaf and Dumb Institute.

[3] The land sold in 1861 at twenty dollars an acre is claimed to have been no better than the remaining forty thousand acres which were sold in 1830–5 for one dollar and twenty-five cents per acre.

[4] *Supra*, 83–85.

[5] Illinois Laws, 1835, 23.

It has been shown that the interest accumulating between 1835 and 1857 on the fund derived from the seminary lands was never repaid by the State or the school fund. The interest on the "one half per cent." fund the State has returned.[1] A portion of this back interest has been used in erecting buildings, while about thirty-four thousand dollars have been added to the principal. The fund now amounts to $156,613.32, affording an annual income of $9,396.80. Since 1877 the income of both funds has been equally divided between the two normal schools of the State.[2]

(*d*) MICHIGAN.

By the act of Congress in 1804, already frequently alluded to, one township in the Detroit land district was reserved for a seminary of learning in the territory now under the jurisdiction of the State of Michigan. By a treaty concluded at Fort Meigs, in September, 1817, between the United States and various Indian tribes, three sections of land were granted to "the corporation of the college at Detroit," and full powers given to the corporation to sell them.[3] The "college at Detroit" was not then in existence, but was established in the following month,[4] under the authority and as a branch of the "Catholepistemiad, or University of Michigania," a corporation chartered by the territorial authorities in August, 1817.[5] In 1821, before any of the lands were located, the authorities chartered the University of Michigan.[6] The management and control of the seminary township given to the trustees was limited to the power of leasing the lands for seven years. The university was also made the legal successor of the Catholepistemiad, and as such acquired the title to the three sections of land belonging to the college at Detroit.

[1] See Illinois Laws, 1861, 147. [2] Pillsbury, cxxxv. [3] 7 U. S. Stat., 166.

[4] Its establishment was announced in the *Detroit Gazette*, October 24, 1817. —Ten Brook, 100.

[5] 2 Territorial Laws, Mich., 104. The charter of this institution, besprinkled with strange provisions in stranger language, is a literary and legal curiosity.

[6] 1 Territorial Laws, Mich., 879.

Steps were immediately taken to have the lands located. The three sections were selected and patents were issued for them in 1824.[1] When the location of the seminary township came under consideration an unexpected difficulty arose. The law required the land to be selected from that to which the Indian title had been extinguished previous to 1804.[2] No good complete township which met the requirement could be found. When this became known, the trustees petitioned Congress to take such action as would remove all obstacles in the way of a location of the lands.[3] In 1826 Congress authorized them to select from any public lands in Michigan an amount equal to twice the first reservation, in tracts of not less than a section each.[4] Thus, by the delay in locating the township, Michigan secured better lands, and, like the other States, twice the original amount.

The trustees of the university at once appointed a committee "to examine the country and to report fully their opinion in regard to the location of these lands."[5] As a result of their investigations two sections were located in 1827 and reserved by the proper authorities at Washington.[6] These two sections lay along the bank of the Maumee River, and are now in the heart of the city of Toledo, in the State of Ohio, this region being then a part of the Territory of Michigan. The lands were exceedingly valuable even at that early day, and many attempts to purchase them were soon made by speculators. In 1831 the trustees, under authority of Congress,[7] exchanged the most valuable half of them for a somewhat larger quantity of less desirable lands in the same vicinity. These latter were in 1836, by permission of Congress,[8] sold back for five thousand dollars to the party from whom they had been originally received.[9] At the time of this last transaction the original selection, exclusive of improvements, was worth half a million dollars.[10] The university, by parting with it six years too soon, received the paltry sum of five thousand dollars. The motives which

[1] Ten Brook, 106.
[2] 2 U. S. Stat., 277, Secs. 2 and 5.
[3] Jour. Territorial Council, 1824, 89.
[4] 4 U. S. Stat., 180.
[5] Adams, 2.
[6] Ten Brook, 107.
[7] 6 U. S. Stat., 402.
[8] *Ibid.*, 628.
[9] Gregory, 60.
[10] *Ibid.*, 61.

led the trustees to dispose of these lands, worth more even then than all the rest of the grant, are difficult to understand, and especially so in view of the fact that special action of Congress authorizing the transfer and sale had to be obtained. The transaction has been and always will be regretted by all interested in the prosperity of the university. For the sake of presenting the whole history of the Toledo lands at once, we may look forward a few years. After the State of Ohio assumed jurisdiction over that region it seemed unadvisable for the university to retain the lands subject to taxation by Ohio. Accordingly the remainder of them were sold between 1849 and 1855 at an average price of nineteen dollars per acre. For all the university lands about Toledo, worth in 1859 two or three millions, but seventeen thousand dollars were realized by the institution.[1] This sale of the Toledo lands and that of the three sections reserved by the Fort Meigs treaty for about the same sum were the only ones made before Michigan became a State. The trustees, however, located twenty-three sections of the lands previous to 1836.[2]

After the establishment of the State government the university was reorganized. The property and funds of the old board of trustees were turned over to the new regents of the institution. This property consisted of a lot and academy building in Detroit, purchased with the proceeds of the Fort Meigs lands and private subscriptions. The fund, as already stated, amounted to five thousand dollars. The university lands were vested in the Legislature by act of Congress in 1837.[3] The constitution declared that the proceeds should be and remain a permanent fund for the support of the university, and enjoined it upon the Legislature to provide for the improvement and permanent security of this fund.[4] As in the case of the school lands, so here, the first State Legislature directed the Superintendent of Public Instruction to make an inventory of the lands, to suggest methods of dis-

[1] For a complete history of these transactions, see Gregory, 59–64, or Ten Brook, 107–109.

[2] Ten Brook, 109. [3] *Supra*, 39. [4] Constitution, Art. X., Sec. 5.

posing of them, and to report a system for the organization of a university.[1] The general policy advocated by the Superintendent with reference to all educational lands in the State[2] has already been discussed. He estimated the university lands as worth certainly fifteen and probably twenty dollars per acre.[3] Having decided in favor of selling the lands, he urged that a limited quantity be offered at auction at a minimum price of at least fifteen dollars per acre.[4] The Legislature, after considering this report, placed the management and care of the fund in the hands of the Superintendent, and authorized him to sell at auction, at a minimum price of twenty dollars per acre, so much of the land as should amount to half a million dollars.[5] The proceeds of the sales were to be loaned on the same terms as were provided for the school funds.[6] During the year 1837, over one seventh of the entire grant was sold, at an average price of twenty-two dollars and eighty-five cents per acre, and the prospects seemed excellent for the speedy realization of the million dollars estimated as the value of the grant.[7] The effects of the crisis of 1837 soon blighted these hopes.

The history of the university fund during the next few years shows the same troubles and disasters which were encountered by the school fund. The sales fell off, many lands already sold under contract were forfeited by the purchasers, and the interest on many others was in arrears. The Legislature was urged to reduce the price of unsold lands, and to

[1] Mich. Laws, 1835–6, 49.

[2] *Supra*, 89 *et seq.*

[3] "It is not apprehended that the amount can, in any event, fall short of the lower estimate, while it is believed, judging from the decisions of the past and the indications of the future, that it will exceed the higher computation."—Senate Jour., 1837, Appendix, 71.

[4] "Let the lands in the more settled parts of the State be thrown into market and sold to the highest bidder. What remains unsold might still be kept in market to be sold as occasion should offer."—*Ibid.*, 70.

[5] Mich. Laws, 1837, 209.

[6] *Supra*, 90. The purchaser was required to pay one fourth of the price in cash, and the remainder in instalments. This was subsequently changed to one tenth cash.—Mich. Laws, 1837, 316.

[7] Report of Supt. of Public Instruction, 1837, 71.

adopt measures for the "relief" of those who had already purchased. The history of the legislation on the subject from 1840 is almost identical with that pertaining to the school lands. The prices of both were reduced simultaneously; similar relief was given to purchasers, and the same general mischief was wrought by ill-advised law-making. Whatever was praiseworthy in the one case is equally so in the other, while in both the same criticisms must be offered.

Before any general reduction of prices was made the university became involved in a contest with squatters who had settled upon lands in the western part of the State, which had been selected for the university in 1836,[1] and confirmed to the State for that purpose in 1837. The first threatenings of the struggle were manifested after the lands were located, but before the selections were confirmed. A petition was forwarded to the Governor and the Legislature, remonstrating against the selection of these lands on the ground that many of them had been occupied previously by settlers in the hope that Congress would pass a law giving all such settlers on public lands preëmption rights.[2] By the petitioners' own showing there was not then in existence a letter of law giving them a claim to the land. At the next session of the Legislature, the lands having in the meantime been confirmed to the State, the settlers insisted that their claims should be recognized, because they had settled on the lands before they had been selected for the university; that the selections were not valuable, and that the interests of the university would not suffer by granting the settlers their rights. A legislative committee, after investigating the subject was unable to say that the settlers had a shadow of legal claim, but, accepting the statement of interested parties, decided that the lands were not so valuable as many others in the State [3] which might be selected in their place. On the recommendation of this committee the Legislature passed an act to release the title of the university to sixteen sections

[1] Ten Brook (p. 117) and Adams (p. 4) give this date erroneously as 1830. See preamble of Act of March 30, 1838, Mich. Laws, 1838, 115.

[2] Senate Jour., 1837, Document No. 15.

[3] Mich. Senate Docs., 1838, No. 37, and House Docs., 1838, No. 35.

of the land, provided Congress at its then present session would give the State authority to select other lands in their stead.[1]

It does not seem probable that the university would have lost any thing had this exchange of lands taken place. Congress, however, did not give its assent to the proposition, and the claimants again returned to the attack. In 1839 a bill was introduced to authorize the sale, at one dollar and twenty-five cents per acre, of any university lands which could be shown to have been occupied previous to their location by the State. The regents of the university remonstrated against the passage of the bill, showing that the lands were worth at least twenty dollars per acre; that the claims of the occupants were not only without legal foundation, but actually fraudulent, and that the bill would open the door to a host of equally fraudulent claims in the future.[2] The remonstrance had no effect upon the Legislature, and the bill was passed. Governor Mason refused his assent to it, pointing out that such a disposition of the lands was a violation of the terms of the trust, and that the bill had been pushed through "by a wholesale species of propagandism in search of adventurers to claim the public lands."[3] This defeat of the settlers did not end the struggle.

One more attack was made upon the Legislature, and in 1840 an act was passed authorizing the appointment of three commissioners to examine each claim, and if it appeared that the claimant had actually settled upon the land before it was selected for the university, to appraise the value of the property exclusive of improvements. The claimant was then

[1] Mich. Laws, 1838, 115.

[2] Senate Docs., 1839, No. 32.

[3] House Docs., 1839, 828. "The Congress of the United States 'have granted and conveyed these lands to the State, to be appropriated solely to the *use* and *support* of the University of Michigan.' The State has accepted these lands, and the constitution enjoins 'that the Legislature shall take measures for their *protection* and *improvement*, and also provide means for the *permanent security* of the funds of the institution.' These are the solemn conditions by which the State holds this sacred trust; and yet, by one single enactment, you place all the lands thus held in trust in market at $1.25 per acre, no matter what their value, when located, or how claimed. . . . Can this be a faithful administration of the trust committed to us?"

permitted to purchase the land at this appraised value.[1] This law was purely a compromise in a matter where the legal right was entirely on the side of the State. By its operations over four thousand acres were sold at an average price of six dollars and twenty-one cents, at a time when other university lands sold for over twenty-four dollars an acre. The general impression has always existed that the greater part of the claims were utterly fraudulent, but after this interval of time it is impossible to determine the truth in the matter.

As already stated, the same policy of reduction of price observed in the case of the school lands, was adopted for the university grant. In 1841 the minimum price of unsold lands was reduced to fifteen dollars,[2] and in the next year to twelve dollars per acre.[3] This last law also provided that the associate judges should examine any lands already sold at twenty dollars per acre or over—that is, all lands sold previous to 1841—and appraise their value in their actual condition at the time of sale. The difference between this valuation and the contract price was, as in the case of the school lands, to be credited to the purchaser. The reduction might be any amount not exceeding forty per cent. of the contract price. Under this law thirty-four thousand dollars were credited back to the purchasers in one year, the reduction being nearly forty per cent. in every case.[4] Up to the 1st of January, 1843, by various relief measures and reductions of price, the amount contracted to be paid had shrunk from two hundred and twenty thousand to one hundred and thirty-seven thousand dollars.[5] If such measures were unwise and unnecessary when applied to the school lands, they were doubly so in this case. There was not the same necessity for a university, as for common schools, in the young State. If the lands would have sold at the higher prices by holding them a few years, and every thing indicates that they would, the true policy was to keep the price up. A delay of a decade in the organization of a university cannot be of such moment

[1] Mich. Laws, 1840, 101.
[2] Mich. Laws, 1841, 157.
[3] Mich. Laws, 1842, 45.
[4] Joint Docs., 1843, 210.
[5] "The 13,000 acres of university lands, once sold for nearly $17 an acre, have dwindled down to 10,500, at an average price of less than $12.50."—*Ibid.*, 219.

as to offset a difference of half a million dollars in its permanent endowment.

In 1838 the regents applied to the Legislature for a loan of one hundred thousand dollars for the purpose of erecting buildings for the university. The application was successful, and the money was loaned to the university at six per cent. interest. Both principal and interest were to be repaid from the income of the university fund.[1] At that time it was expected that the lands would sell rapidly, and that the income of the university would soon reach sixty or seventy thousand dollars, from which the loan could easily be repaid. From causes already noted the sales progressed, and the income increased, far more slowly than had been anticipated. The payment of the interest on the loan absorbed the greater part of the annual income of the institution. In 1844 the Legislature relieved the embarrassments of the infant university by adopting a measure which accelerated the sales of land without any reduction in the price. This was accomplished by authorizing the receipt of certain outstanding State warrants in payment for lands. As these warrants could be bought in the market for about fifty cents on the dollar, the actual cost of the land to the purchaser would be but half the legal price. As the State accepted these warrants at par in such cases, and credited the full amount to the university fund, the latter suffered no loss. This law, however, indirectly authorized the eventual payment of the loan from the principal of the university fund.[2] This use of the fund was unconstitutional, as well as contrary to the terms of the grant. However, no objection was made to the provision, and in 1850 the State repaid itself the one hundred thousand dollars by deducting that amount from the fund of the university in its possession.[3]

Had the proceedings stopped here there would be no doubt that the university was relieved from all further obligation in the matter, as there could be none that the last

[1] The State did not have the money in its treasury, and twenty-year bonds were issued to the amount required.—Mich. Laws, 1838, 248.

[2] Mich. Laws, 1844, 18, 117.

[3] Joint Docs., 1850, No. 2, pp. 11, 36; *Ibid.*, 1851, No. 2, pp. 7, 32.

action of the State was unconstitutional. In 1853, however, for reasons not necessary to note here, the Legislature ordered the proper State officers to pay to the university, at stated intervals, "the entire amount of interest that may hereafter accrue upon the whole amount of university lands sold or that may be hereafter sold."[1] That is, the State was to pay interest not only upon the amount of the fund then upon the books, and which the State in accordance with its established policy had borrowed, but also on the hundred thousand dollars deducted in 1850 in payment of the loan. So far as the university was concerned, this latter amount was thus made a part of the fund so long as the act remained in force. This arrangement continued until 1877,[2] when, by authority of the Legislature,[3] one hundred thousand dollars were transferred back to the fund on the books of the State. Thus the fund to-day represents the actual proceeds of all the sales. Evidently the loan has not been paid out of the principal of the fund, and the records show no such payment from the income. It is not probable, however, that the State, which has always been generous with its university, will ever demand repayment of the loan.

When the land-office was established in 1842, the management of the university lands passed into the hands of the Commissioner. Since then the sales have continued uninterruptedly. Many attempts have been made to reduce the price, but fortunately all have failed. The lands are all sold except two hundred and eighty-seven acres, and the fund amounts to $543,317.66.[4] The average price received per acre for the entire quantity sold is eleven dollars and eighty-seven cents,[5] or more than twice that received for any other educational grant in the Northwest Territory.

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[1] Mich. Laws, 1853, 85. [2] See Mich. Laws, 1855, 139; 1857, 154; 1859, 397.

[3] Mich. Laws, 1877, 290. This was a general law authorizing transfers between different accounts on the books of the State preparatory to the adoption of a new system of keeping the accounts. No mention is made of this particular transfer, and the law is no evidence of an intention to give the one hundred thousand dollars to the university.

[4] Report, Supt. of Pub. Instruction, 1882, 18.

[5] Excluding the Toledo lands sold during the territorial days, the average is slightly over twelve dollars.

(*e*) WISCONSIN.

Congress made no reservation for a seminary in Wisconsin until 1838, when in response to a petition of the territory the usual seventy-two sections were set aside.[1] On the same day that the petition was framed by the territorial Legislature a law was passed establishing the "University of the Territory of Wisconsin."[2] This law made no reference to any prospective land grant, nor were the lands applied to the benefit of the institution before Wisconsin became a State. Two thirds of the lands were located by special commissioners appointed by the Legislature in 1840,[3] and the remainder by similar officers appointed in 1846.[4] During the territorial days the trustees of the university organized as a board, but took no measures to establish and open the institution.

The State constitution adopted in 1848 provided for the establishment of a State university "at or near the seat of government," and declared that the lands granted for a university should constitute a perpetual fund, the income of which should be given to the support of this institution.[5] The first State Legislature repealed or amended the law establishing the territorial university, and formally chartered the "University of Wisconsin at Madison."[6] In the same year an appraisal of the lands, together with all improvements made by occupants or claimants, was ordered.[7] About seven eighths of the grant was thus appraised. The values ranged from one dollar and thirteen cents to seven dollars and six cents per acre, the average being two dollars and eighty-seven cents.[8] The report of the appraisers was presented to the Legislature, and in 1849 a law was passed providing for the sale of the lands at auction. The valuation set by the appraisers was established as the minimum price receivable, and previous settlers were given preëmption

[1] *Supra*, 40.

[2] Butterfield, 9. Institutions of the same name had been chartered in 1836 and 1837, but no attempt at organization was made in either case.

[3] Wis. Stat., 1839, 158.

[4] Wis. Laws, 1846, 99.

[5] Constitution, Art. X., Sec. 6.

[6] Wis. Laws, 1848, 37.

[7] *Ibid.*, 123.

[8] Butterfield, 50. Assembly Jour., 1850, 499, 500.

rights at this price.[1] The proceeds, as in the case of the school lands, were loaned to individuals on real-estate mortgages.

It is needless to enter again into the question of the best policy to be observed by a State in managing lands held in trust for higher education. If it is decided that the lands should be sold as soon as possible, no measure can be fairer than one which offers them at their appraised value, provided a fair appraisal can be obtained. There is reason to believe that the appraisal in Wisconsin was not entirely honest,[2] though in some cases the prices fixed were high enough.[3] Many lands were sold during the first year, but the next Legislature held the sound opinion that it was better to accumulate a large fund, even though the sales were less rapid, than to sacrifice the lands for the sake of an immediate fund. The minimum price was accordingly raised to ten dollars per acre.[4] The sale of more than a thousand acres in the next twelve months at an average of over ten dollars showed the wisdom of the step.

But the policy of the State had become firmly settled in favor of using trust lands to attract immigrants. These slow sales were contrary to that policy, and strong pressure was brought to bear on the Legislature to reduce the price again. The prominent argument used was, of course, that the interests of the university would be advanced by faster sales at lower prices and the more speedy accumulation of the fund.[5] The committee of the State Senate did not, however, favor a reduction, preferring to hold the lands until they should be worth the established price, as they must be sooner or later.[6] The Legislature differed with the com-

[1] Wis. Laws, 1849, 149.

[2] This is shown by the fact that the average appraised value of the sixteenth section school lands was $3.66, while that of the university lands, which were selected lands and hence more valuable, was but $2.87 per acre.

[3] See letter of Stoddard Judd in Assembly Jour., 1850, 999.

[4] Wis. Laws, 1850, 144.

[5] The letter of Stoddard Judd, already cited, says: "I have no hesitation in giving it as my opinion that every interest of the State University . . . would be both now as well as hereafter promoted by an entire and total repeal of the law," fixing the minimum price at ten dollars per acre.

[6] Senate Jour., 1851, 468.

mittee, and reduced the price to seven dollars per acre, except where the land had been appraised at a higher value in 1848. Occupants were given preëmption rights to purchase at the appraised value in all cases. All preëmptors who had purchased lands at more than the appraised value were credited back all excess over that value.[1] "The effect of this legislation was to secure the university lands to preëmptors at prices, on the average, far below the minimum price as fixed by the law of 1850, or even that of 1851. Immigration was thus encouraged, but at the expense of the vital interests of the university."[2]

The mania for selling the lands had by this time taken such hold upon the State that any law which did not succeed in attracting purchasers at once was deemed a failure. The next Legislature, urged by various petitions and the advice of a committee,[3] adopted a new measure for hastening sales. The Governor was authorized to appoint commissioners to re-appraise the unsold lands. None were to be appraised at less than three dollars per acre, and the value as estimated by the commissioners was to be the minimum price.[4] Under these provisions the lands were appraised, the greater part of them being valued by the commissioners, in pursuance of the hint given in the law, at three dollars per acre. At these prices they were in great demand[5] and were soon sold. The proceeds of the forty-six thousand acres amounted to about one hundred and fifty thousand dollars.

While passing laws for selling the lands at low prices the Legislature, realizing the effect which such sales would have on the ultimate fund, petitioned Congress for seventy-two sections more for the university in lieu of the saline lands granted to the State in 1848 but never located.[6] As already stated,[7] Congress complied with this petition in

[1] Wis. Laws, 1851, 419.

[2] Butterfield, 56.

[3] The committee concluded their report with the following opinion: "To ensure the sale of any considerable portion of the university lands a further reduction in the price is necessary. As the law now stands none can be sold except on pre-emption for less than seven dollars per acre, which *at present* operates nearly as a prohibition of sales."—Appendix to Journals, 1852, 202.

[4] Wis. Laws, 1852, 769.

[5] Governor's Message, 1854, 9.

[6] Wis. Laws, 1851, 438.

[7] *Supra*, 41.

1854. The Legislature now had an opportunity to atone for the errors by which the former grant had been sacrificed. But the policy of the State had become fixed, and many of the lands were appraised and offered for sale on the terms established by the law of 1852. In 1859 the clauses providing for appraisal were repealed, leaving the minimum price of all unsold appraised lands at three dollars.[1] In 1863 the price of all lands once offered for sale without finding a purchaser was reduced one third,[2] and in 1864 the price of all lands which had never been appraised was fixed at three dollars per acre.[3]

No voice seems to have been raised against these laws until it was too late to correct the evil. In 1871 the opinion was ventured that the State, and not the university, had received "whatever benefit may have been derived from such sales."[4] In 1872 the Governor arraigned the policy which had prevailed, and asserted that nine tenths of the value of the fund had been sacrificed by hasty sales at low prices.[5] In the same year, the Legislature, in the preamble of an act making an appropriation for the university, formally condemned the whole policy hitherto pursued, and confessed that it was too late to effect any benefit by a change.[6]

[1] Wis. Laws, 1859, 226. [2] Wis. Laws, 1863, 431.

[3] Wis. Laws, 1864, 514. The constitution required an appraisal of all lands before they were offered for sale. It is difficult to see how this law and the constitution can be reconciled.

[4] Report, Supt. of Pub. Instruction, 1871, 22. [5] Governor's Message, 1872, 17.

[6] The preamble reads:

Whereas, It has hitherto been the settled policy of the State of Wisconsin to offer for sale and dispose of its lands, granted by Congress for educational purposes, at such a low price per acre as would induce immigration and location thereon by actual settlers; and

Whereas, Such policy, although resulting in a general benefit to the whole State, has prevented such an increase of the productive funds for which such grants were made as would have been realized if the same policy had been pursued which is usually pursued by individuals or corporations holding large tracts of lands; and

Whereas, The university fund has suffered serious loss and impairment by such sales of its lands, so that its income is not at present sufficient to supply its wants, and cannot be made so by any present change of policy, inasmuch as the most valuable lands have already been sold, therefore," etc.—Wis. Laws, 1872, 114. See also Report of Regents, in Wis. School Reports, 1874, 85, 86.

Finally, in 1876, the Legislature, in voting a permanent tax for the support of the university, put on record another lasting condemnation of its earlier policy, by declaring that this tax should be deemed "a full compensation for all deficiencies arising from the disposition of the lands donated to the State by Congress in trust for the benefit" of the university.[1] Thus the mismanagement of earlier days has entailed on the present and all succeeding generations a burden of taxation to compensate for early prodigality.

But the fund was impaired in another way, and for several years the result of the impairment promised to be permanent. In 1862 the Legislature authorized the regents to use the principal of the fund to pay off indebtedness incurred in the erection of buildings.[2] In accordance with this act $104,339.42 was taken from the fund.[3] This act was clearly in violation of the conditions of the grant, and of the provisions of the constitution, by both of which the proceeds of the land were to form a permanent fund for the support of the university.[4] In 1867 the Legislature authorized the annual payment by the State of seven per cent. on the amount thus wrongfully taken from the fund,[5] and this sum has, since 1876, been included in the permanent tax levied for the benefit of the university. About twenty-two hundred acres are still unsold,[6] and the fund is $228,438.83,[7] which is invested in government and municipal bonds, and in loans to various counties. Including the money used for the erection of buildings, the proceeds of the sales are $333,778.25, or an average of three dollars and seventy-one cents per acre.

C.—AGRICULTURAL COLLEGE GRANT.

(*a*) OHIO.

When Congress passed the Agricultural College bill all the public lands in Ohio had been sold, hence the State received scrip for the six hundred and thirty thousand acres to which

[1] *Apud* Whitford, 71.
[2] Wis. Laws, 1862, 168.
[3] Whitford, 69.
[4] See Governor Washburne's Message, 1872, 17.
[5] Whitford, 70.
[6] Report, Com. of Pub. Lands, 1882, 6.
[7] Report, Sec'y of State, 1882, 12.

she was entitled.[1] Under the terms of the grant the State was prohibited from locating this scrip,[2] and it was supposed by many that the only method of utilizing it was to sell it for the best price obtainable. This was a manifest disadvantage, for so long as public lands were abundant in the United States, the scrip could by no possibility become worth more than the cash price of government lands—that is, one dollar and a quarter per acre. The expedient adopted by a few States of transferring the scrip to the trustees of the college, by whom it could be located and the land held so long as was deemed advisable, did not suggest itself to the Legislature of Ohio.

In 1865 the Auditor, Secretary of State, and Treasurer were authorized to offer the scrip for sale, but to accept no proposition at less than eighty cents an acre.[3] On the proceeds of the sale, which were to be placed in the treasury, the State was to pay six per cent. interest. Though the minimum price thus fixed was but sixty-four per cent. of the nominal value, it was not far from the actual market value of the scrip at the time, owing to the vast quantities then obtainable from the different States. Offers were made to the commissioners for the purchase of the entire quota of Ohio at eighty cents per acre, provided a short credit would be given for the payment.[4] This the commissioners decided they were not authorized to grant, and no sale was made. The General Assembly at its next session removed the limit on price, and instructed the commissioners to sell the scrip "at the best price they can obtain for the same," and to make "prompt and vigorous efforts to effect the sales." Where scrip for ten thousand acres was purchased by any party, payment might be made in instalments covering a period of three years, and any one purchasing fifty thousand acres was allowed six years in which to make payments.[5] Under this law the entire amount was soon sold for $340,906.80, all but seventy thousand acres being sold at fifty-three cents per acre.[6] This enormous falling off from the

[1] Document A, 230.
[2] *Supra* 24 and note 1.
[3] 62 Ohio Laws, 189.
[4] Education in Ohio, 205.
[5] 63 Ohio Laws, 139.
[6] Education in Ohio, 206.

offers of the previous year caused the Legislature to call upon the commissioners to state "why the land scrip belonging to the State was sold, part of it on time, for less than fifty-three cents an acre, while the government was selling lands at one dollar and twenty-five cents an acre." The commissioners promptly denied that any had been sold for "less than" fifty-three cents, and defended themselves on the ground that they were instructed to make "prompt and vigorous efforts to sell at the best price obtainable."[1] With this reply the matter ended. This magnificent gift, like the others received by the State for educational purposes, was sacrificed by an undue haste in turning it into money. The scrip had been sold before any college was incorporated to take the benefit of the grant, but in 1870 the income of the fund was bestowed upon the Ohio Agricultural and Mechanical College, better known as the Ohio State University.[2] The college was located in October, 1870, in the suburbs of Columbus, the county of Franklin giving three hundred thousand dollars for the erection of buildings and equipment of laboratories. The fund arising from the sale of the scrip had in the meantime been accumulating in the treasury,[3] and by the time the college was opened had increased to over four hundred thousand dollars.

In 1872 the State gave to the college certain lands, which it had just received from Congress,[4] and ordered their sale at public auction after a careful appraisal.[5] Something over twenty thousand dollars has been received from them, and some are still unsold.[6] The proceeds of these sales are added to the fund belonging to the college, all of which was, in 1877, made a part of the irreducible debt of the State, with interest payable semi-annually.[7] Portions of the income have for some reason been withheld from the use of the college and added to the principal until the latter has increased to $558,529.[8]

[1] *Ibid.* [2] 67 Ohio Laws, 20. [3] 67 Ohio Laws, 15. [4] *Supra*, 34.
[5] 69 Ohio Laws, 52; 70 Ohio Laws, 107.
[6] Up to November, 1881, the receipts were $20,506.63. Exec. Docs., 1881, Part I., 184. [7] 74 Ohio Laws, 101. [8] Auditor's Report, 1882, 17.

(*b*) INDIANA.

In Indiana, as in Ohio, there were no public lands when the grant was made, and the State received her quota of three hundred and ninety thousand acres in scrip. In 1865 trustees of the "Indiana Agricultural College" were appointed and made a body corporate with power to sell the land scrip "at such times and in such manner as shall be most advantageous to the State."[1] The act made no provision for the establishment of a college, but simply constituted proper authorities to dispose of the grant. It was provided in the law that the proceeds of the sales should be invested in United States bonds bearing not less than five per cent. interest, and that the interest should be invested in a like manner as fast as it accumulated until the Legislature should make some further provision for establishing a college in accordance with the requirements of the act of Congress. The trustees sold the scrip at an average price of fifty-four cents an acre.[2] The proceeds, amounting to $212,238.50, were invested as the law directed. The reasons which induced the trustees to dispose of the scrip at this price, I have been unable to learn.

No agricultural college was organized until 1869, when one was established near La Fayette, under the name of Purdue University, in honor of a gentleman who gave to it one hundred and fifty thousand dollars and a hundred acres of land for a site. To this gift Tippecanoe County added fifty thousand dollars. The donations were used for the erection of buildings, but the university was not opened until 1873. In the meantime the fund had increased by the accumulations of interest. In this way the effect of the hasty sales was partially counterbalanced, though the present fund of three hundred and forty thousand dollars[3] represents but eighty-seven cents an acre for the grant.

[1] Indiana Laws, 1865, 106.

[2] President Owen erroneously states it at "sixty cents to the dollar," which would have been seventy-five cents an acre.—See Report, Supt. of Pub. Instruction, 1872, 134.

[3] Report, Supt. of Pub. Instruction, 1882, 179.

(*c*) ILLINOIS.

Illinois received the four hundred and eighty thousand acres of land to which she was entitled, in the form of scrip. In 1867 the Legislature created the Illinois Industrial University, and transferred the land scrip to the trustees as an endowment fund for the new institution. Under the act of Congress making the grant, these trustees had the right to locate the scrip. Had the trustees sold half the grant, the income would have been sufficient for the immediate needs of the college. Then by judiciously locating the rest, and selling the lands gradually as they increased in value, a vast fund might have been produced. This plan seems to have been favored at the outset, and twenty-five thousand acres were located in Minnesota and Nebraska.[1] Then, for some reason, the trustees adopted the other plan, and sold the rest of the scrip at seventy cents an acre, realizing from the sales $319,178.87,[2] which was invested in State and county bonds.

The university was located in Champaign County, and received from the county about four hundred thousand dollars in farms, buildings, and money for the construction of other buildings.[3] The Minnesota and Nebraska lands have not been sold and are rapidly increasing in value. It is not improbable that, though they constitute but one twentieth of the original grant, they will produce over one third as much as was derived from the entire amount of scrip sold.

(*d*) MICHIGAN.

In Michigan the establishment of an agricultural college preceded by several years the grant of lands by Congress. The constitution of 1850 required the Legislature to provide for such an institution as soon as practicable,[4] and at the session of 1853 a bill to organize the college passed one branch, but failed to reach consideration in the other. In 1855 an act was passed establishing the college, and appro-

[1] Pillsbury, cxliii.
[2] *Ibid.*
[3] Illinois School Report, 1877–8, 171.
[4] Constitution, Art. XIII., Sec. 11.

priating twenty-two sections of the saline lands for the purchase of a site and the erection of buildings.[1] The proceeds of the lands amounted under existing laws to nearly sixty thousand dollars. With this and forty thousand dollars appropriated by the Legislature the college was organized and equipped. From this time until the grant was received from Congress and rendered available, the institution was supported by legislative appropriations. The State was urged to give to the college a considerable portion of the proceeds of the swamp lands, but contented itself with granting those situated in the four townships adjoining the college. These amounted to six thousand nine hundred and sixty-one acres,[2] and were subsequently sold for $42,396.87,[3] and the proceeds used for various needs of the college.

When the Congressional grant was made the Legislature placed the selection and disposal of the lands in the hands of a board known as the Agricultural Land Grant Board, and put a minimum price of two dollars and fifty cents per acre upon them.[4] Commissioners were sent out by the board to examine the eligible public lands in Northern Michigan. For some reason, possibly upon the supposition that lands selected for the endowment of an agricultural college should be farming lands, the board carefully abstained from locating any tracts of pine, which are now the most valuable lands in that part of the State.[5] Those chosen

[1] Mich. Laws, 1855, 279. There were seventy-two sections of saline lands belonging to the State. In 1846 a minimum price of four dollars an acre had been placed upon them. (Revised Stat., 1846, chap. 60.) The proceeds of twenty-five sections were used in erecting buildings for the asylum for the deaf, dumb, and blind. (Mich. Laws, 1848, 246; 1849, 137; 1850, 334.) Twenty-five sections were given to the Normal School as an endowment fund. The proceeds of these last, with the exception of eight thousand dollars used for the erection of a building, were to be borrowed by the State at six per cent. interest. (Mich. Laws, 1849, 157, 221; 1850, 127.) The last of these sections was sold in 1868, and the total fund of the school is $69,126.04. (Report, Supt. of Pub. Instruction, 1882, 19.) The remainder of the original grant is accounted for above.

[2] Joint Docs., 1858, No. 7, 33.

[3] Governor's Message, 1883.

[4] Mich. Laws, 1863, 201.

[5] It is related that when the commissioners were on the eve of starting out to search for eligible lands, one of the members of the board suggested the propriety of their seeking only agricultural lands, as the grant was for an agricul-

were, however, of good quality. The patents were obtained for them in 1868, and the board raised the minimum price to five dollars an acre.[1] Very few were sold during the first year, and the Legislature, leaving the price of timber land at five dollars, reduced that of all others to three dollars an acre.[2] A considerable quantity was sold at these prices. In 1880, upon the suggestion of the Commissioner of the State Land Office, the board raised the price to five dollars per acre.[3]

By the law of 1863 it was provided that the proceeds of the sales should be invested in stocks yielding not less than five per cent. interest.[4] This was a mere compliance with the conditions under which the grant was held. In 1871 it was ordered that the receipts be placed in the treasury, and that the State pay seven per cent. interest thereon.[5] Of the two hundred and forty thousand acres which the State received, one hundred and thirty-four thousand, or considerably more than half, are yet unsold.[6] The average price received for those sold is three dollars and forty-seven cents an acre, and the fund is $367,117.24.[7] The remaining land is of good quality, and if the minimum price now established is adhered to, as it should be, the ultimate fund cannot fall short of a million dollars.

(*e*) WISCONSIN.

In 1863 the Governor of Wisconsin was authorized by the Legislature to appoint commissioners to select the two hundred and forty thousand acres of land to which the State

tural college, *but that if they saw any good pieces of pine they might make a minute of their situation.* Upon the return of the commissioners with a long list from which the board might select, the farming lands were chosen for the college, while the member of the board who had offered the advice at the outset shortly afterward became a large purchaser of pine lands, which have since become extremely valuable. The State in one of its latest advertisements of the lands says "they were carefully selected for farming lands."

[1] Smith, 79.

[2] Mich. Laws, 1869, 51.

[3] Report, Commissioner of Land Office, 1882, 6.

[4] Mich. Laws, 1863, 201.

[5] Mich. Laws, 1871, 87. Slightly amended in 1875.

[6] January 1, 1883, the State still owned 134,249 acres. 4,337 acres of the grant are not yet located.

[7] Report, Supt. of Pub. Instruction, 1882, 18.

was entitled.[1] The commissioners located the lands in seven of the newer counties of the State,[2] and the selections were approved by the Secretary of the Interior. In 1866 the University of Wisconsin was re-organized, and a college of arts, embracing instruction in agriculture, mechanics, engineering, and kindred industrial arts, was established in connection with it. The income arising from the Agricultural College grant was pledged to the university as an endowment in addition to that which she already had from the seminary lands.[3] At the same time it was ordered that the lands be immediately offered for sale at public auction at a minimum price of one dollar and twenty-five cents per acre.[4] Once offered at auction and not sold, they were subject to private entry. Since then the price has remained unchanged, and the greater part of the lands has been sold at the legal rate.

Thus again the Wisconsin policy manifested itself. After selecting the best lands which the commissioners could find, the State might reasonably have placed a higher price upon them than was asked by the United States for lands. Instead of doing so she offered them for sale on better terms for the purchaser than those given by the United States, for while the latter sold all lands for cash, the State disposed of hers at the same price on credit. She could hardly have done less in execution of the trust without violating it; she ought to have done far more.

While Wisconsin has been selling her lands for a beggarly dollar and a quarter per acre, Michigan has been receiving three and five dollars per acre for lands obtained under the same grant. Starting with the same number of acres, Michigan, as already stated, has a fund of $367,000, and 134,249 acres still on hand, valued at five dollars an acre; Wisconsin has accumulated a fund of $279,689.84,[5] and has sold all but 19,889 acres,[6] which are held at one dollar and

[1] Wis. Laws, 1863, 408.
[2] Butterfield, 106.
[3] Wis. Laws, 1866, 153.
[4] *Ibid.*
[5] Report of Commissioners of Public Lands, 1882, 21, 24. This, like the other educational funds of Wisconsin, is invested in United States and municipal bonds and in loans to various counties.
[6] *Ibid.*, 20.

twenty-five cents an acre. Michigan's ultimate fund will be a million dollars, while Wisconsin's will not much exceed three hundred thousand, and can by no possibility become as large as the fund which Michigan has derived from less than one half of her grant. Since the two States received, at the same time, the same amount of land of a similar quality, the above comparisons afford a most striking illustration of the results of the two ways of managing lands granted for educational purposes.

D.—CONCLUSION.

Thus far the chief object has been to present the raw material of historical facts, and to that end I have traced the origin, management, and disposition of every grant made to the States of the Northwest Territory for the purpose of fostering education. Occasional criticisms have been passed, and, in a few instances, the good or bad features of a single measure or a particular policy have been indicated. It remains to take a general survey of the subject, to decide whether the cause of education has derived the utmost possible good from the federal aid, to indicate the leading causes of trouble encountered, and to draw a few conclusions from the experience of the five States.

Viewed from the standpoint of the existing tangible funds, there can be no question that a greater amount of money might have been realized from the grants. It is needless, after the facts presented in the foregoing pages, to enter into any proof of this. When good lands have been sold for from fifty cents to one dollar and a quarter an acre; when portions of the proceeds have been lost by poor investments or by embezzlement; when speculators have jumped at the opportunity of purchasing at the prices fixed, and have made fortunes by reselling the lands shortly afterwards at greatly increased prices, that might have been obtained by the State itself, few will deny that the funds might have been made larger. But we must not fall into the error of assuming that a wise or unwise management of an educational grant is to be determined solely by

the amount of money which the State derives from it for a permanent fund. The factors in the problem are more numerous, and the process of solution far more complicated, than that which comes before the ordinary real-estate dealer seeking to derive the greatest number of dollars from the fewest possible acres of land.

The grants were made for the support of schools and colleges, not during the life of one generation, but of all succeeding generations—the earliest and the latest. The first thought, then, would be to sell the land as soon as purchasers could be found, in order that the first generation might derive a benefit from it. But the income, if sufficient to afford school facilities for the children of that generation, would fall far short of the needs of the next and more numerous. On the other hand, to retain the lands unsold for three or four decades would deprive the earliest generation of school-children of all benefits of the fund. If, in this dilemma, we seek to ascertain the intention of the grantor we shall find ourselves no nearer a solution. The fact that the first school reservations were made as an inducement to purchasers would seem to indicate that Congress designed the grants to be used by those who were brave enough to venture into the territory when it was a wilderness, and by buying land from Congress assist in relieving the financial pressure under which the country was groaning. But this presumption is destroyed by the fact that in early days a State was not permitted to dispose of its educational lands, and that a whole generation had passed away before Congress allowed them to be sold.

The acts of Congress under which the grants were held by the older States provided that certain land be reserved or granted "for the maintenance of common schools," or a college, thereby showing that it was intended to create a permanent fund. It is doubtful, however, if any member of the Congress of the Confederation had a well-defined plan for utilizing the grant. Whether the resultant fund should be large or small, whether the grant should be immediately turned into money, or be disposed of slowly, in order to ac-

cumulate a larger ultimate fund, became, therefore, questions of state policy simply.[1]

The argument in favor of an early sale of the grants is based on the theory that a little money for the maintenance of schools and colleges in the infancy of a State, when the people are poor, is of more service than a far larger sum at a later day, when the accumulations of wealth enable a large part of the necessary support for education to be raised by taxation. This theory, if sound at all, can apply only to primary or common schools, for the circumstances can never exist which make it wise to sacrifice the ultimate endowment of a college or great university for the mere sake of opening the institution a few years earlier. No one will deny that Ohio University would be far stronger to-day, and better fitted to perform its work, if its lands had not been disposed of before the year 1835. And there were opportunities elsewhere sufficiently near at hand where the few youths who composed its first twenty classes might have obtained instruction. Nor is the theory universally sound when applied to the common schools. One may admit the general truth of the statement that a little help at the beginning counts for more in the end than greater assistance at any one time thereafter. But this is not admitting the right of those in existence when an educational grant is made to despoil the heritance of the coming millions for the sake of lessening the burden of providing their own children with an education.

In the early days of a State the inhabitants are few and the school-children are not numerous. The State is certainly unwise if, for the benefit of these, it undertakes to sell all its school lands, those in the remote and sparsely settled regions as well as those near its centres of population, for

[1] "Whether the public fund shall be ample or meagre, whether it shall be sufficient to place our schools and seminaries of learning on high and elevated ground, or leave them to pine and droop, will depend in a great measure on the course that shall be adopted in respect to them. It is a fund which ought to be held sacred, and religiously regarded. Its benevolent object is to promote the best good of the State in all future time."—Report of Superintendent of Public Instruction; Senate Jour., Mich., 1837, Appendix, Document 7, 67.

such prices as the current demand will obtain. Shall the first generation, as in Illinois, go free of school taxes because those who come later can better afford to pay? Would it have been just to the present generation if Wisconsin, in 1836, had obtained, from Congress, as some of her legislators desired, a cash grant for schools equal to one dollar and a quarter per acre in place of the lands themselves? On the other hand each generation has the right to demand that its interests shall not be sacrificed to those of its successors. For a State Legislature at the outset to set a price on the land far above its value would perhaps be as unjust as deliberately to undervalue all the lands.

What, then, is the happy medium? Is it possible even abstractly to mete out equal justice to all, and to discover any definite rule by which to proceed? My study of the question leads me to believe that it can be done, and that Superintendent Pierce of Michigan formulated it roughly in 1837, when he recommended that the lands be sold "gradually as the wants of the country and a sound discretion might seem to require," and when he maintained that the disposition of the lands would be the wisest that would ultimately yield the greatest amount of revenue for the support of schools, and at the same time provide so soon as possible for the education of those then of school age.[1] This statement needs precision and definiteness to make it applicable in practice, but it contains a correct principle. If the school lands are to be sold, let them be disposed of, the most valuable first, in such quantities and on such terms that as nearly as may be each of the earlier generations shall derive an income approximately equal to what the rents of the rentable school lands would afford at that time. In a new State rents will gradually appreciate for many years, and when they cease to rise no larger income will accrue in the future. If now the educational lands are leased under proper restrictions until that time, equal justice is done to all beneficiaries. If the State prefers to begin at once with sales in fee, the same result will be brought about by fixing as a minimum price of

[1] Senate Jour., Mich., 1837, Appendix, Document 7, 68, 70, 74.

the entire grant the present value of the choicest lands. As the population increases and settlements are made, the outlying land will rise in value to the fixed minimum, and will find ready sale. In the meantime, until it is worth that price, it can be leased on such terms as are thought wise or possible.

This system would produce an income approximately equal to the average rent. It is the plan at the bottom of the system of Michigan, beyond question more successful than any other State in dealing with the problem, though unfortunately the original plan has suffered at the hands of later legislators. It is essentially the system pursued by Nebraska, which, by its constitution, has forbidden sales of educational lands for less than seven dollars an acre, and has ordered that they be rented until they attain that value.[1] This plan is not a mere theory, and can easily be carried out. It was as practicable in 1802, when Ohio first attacked the problem, as it is to-day for Nebraska and other Western States.

Taking the results that would have been attained by a strict adherence to this or a similar plan, as a criterion by which to test the results actually reached in the five States under consideration, one is forced to admit that the States of the Northwest Territory have failed to handle their educational lands to the best advantage. Some States have made more serious mistakes than others, but no one of them is entirely blameless. There has been one disturbing factor, however, impossible of complete elimination in the actual working of the problem, that did not appear in the theoretical solution. So long as lands of the United States are abundant in a State, it is difficult to lease educational lands, and impossible to sell them for more than the price of government lands, except in the settled portions of the State, unless some great inducement in the way of easy terms of payment be offered. No man will pay five or ten dollars in cash for an acre of school or university land, if he can purchase equally good government land in the same locality for one dollar and twenty-five cents an acre. Several of the States

[1] Constitution of Nebraska, Article VIII., Sec. 8, 9.

succeeded in reducing this troublesome element to comparative insignificance by offering educational lands on long credit. To the almost moneyless immigrant this was a convenience sufficient to make him willing to pay a far higher price than if immediate payment had been demanded.[1]

After making all necessary allowance for such disturbing elements, it will be found that the present condition of the funds is due almost solely to causes for whose existence and potency the Legislature and the people are directly responsible. These causes are neither obscure nor difficult of analysis. Some of them have been indicated in the preceding pages, but may be restated here.

First: *An undue haste in selling the lands.* The best evidence of this is that in most of the States prices have been several times reduced, because sales were not progressing with sufficient rapidity to satisfy the Legislature. One of the Western States has attempted to guard against this evil by forbidding any sale of school lands until sales are authorized by a vote of the people of the State at a general election.[2] Another has provided that the educational lands shall not be sold for a certain number of years after the adoption of the constitution.[3]

Second: *Careless legislation and lack of restrictions on the Legislature.* Many carelessly framed and ill-advised laws have been adopted, leaving loop-holes for fraud and for false and unfair appraisals of the land. No constitutional restrictions having been placed on the law-making power, the Legislatures have been enabled to fix any price they have desired upon the lands, and as a result absurdly low prices have been established. In short, the trusts have been subject to the caprice of ever-changing and fickle-minded bodies of public servants. Some of the younger States have provided effectually against this evil by constitutional enactment fixing the lowest price at which educational lands may be sold.[4]

[1] As these deferred payments bore interest, the transaction was for the State both a sale and an investment of the proceeds.

[2] Constitution of Kansas, Article VI., Sec. 5.

[3] Constitution of Minn., Article VIII., Sec. 2.

[4] See Constitution of Nebraska, Article VIII., Sec. 8.

Third: *Failure to guard and invest properly the moneys received from the land sales.* It has been shown that many of the provisions for the investment of the funds have been of a lax and unbusiness-like character, and as a result losses, easy of avoidance with proper care, have been of common occurrence. Then, too, in several instances the lack of any checks upon the officials who have had the handling of the funds has resulted in dishonesty and embezzlement. This phase of the subject should have received the most careful attention, for however discreditable it may be to human nature and to morality, it is certain that public trust funds have come too generally to be treated as exempt from the operation of the eighth commandment. While theoretically the most sacred of all public funds, they are really the most liable to mismanagement and plunder. Costing the people nothing, they are not subjected to the same watchful scrutiny as other funds. Every thing realized from them is regarded as clear gain, while what is taken from them, either directly or indirectly, is hardly felt as a loss.[1]

The people of Indiana learned this after a hard experience, and in their constitution, adopted in 1851, made each county responsible for the safe handling of the portion of the fund in its possession, and required it to make good all losses. The constitutions of Nebraska and Colorado also require the State to "supply all losses that may in any manner accrue" to the educational funds.[2] While these provisions will not prevent dishonesty on the part of officials, they are effectual in protecting the funds. Many of the newer States and some of those in the Northwest Territory have also adopted constitutional provisions requiring all educational moneys to be invested in certain classes of securities. The educational funds of Texas, for example, can be invested only in bonds of the United States or of the State of Texas,[3] while

[1] "All history shows that charitable funds, unless faithfully protected by public authority, become subjects of the very greatest abuse."—Legislative Documents, Ohio, 1838, II., No. 17.

[2] Constitution of Nebraska, Art. VIII., Sec. 9. Constitution of Colorado, Art. IX., Sec. 3.

[3] Constitution of Texas, Art. VII., Sec. 6.

in Nebraska the investments must be in United States or State securities or registered county bonds of Nebraska.[1]

The policy adopted by many of the States, of borrowing the educational funds at a fixed rate of interest, and making the loan permanent, has already been alluded to.[2] While it renders the fund secure and the income steady, the wisdom of any system must be questioned which subjects the people to a perpetual tax to pay the interest on loans made for the benefit of a single generation of their predecessors. In Ohio and Michigan, for example, the school funds have been permanently borrowed by the State and used to defray various expenses of the government. To-day the entire support for schools in those States is raised by taxation, and the school funds are purely ideal, constituting merely a moral and legal obligation on the people, to lay an annual tax forever, sufficient to pay the interest on the funds spent by their ancestors.

Fourth: *The general indifference of the people to the whole subject.* Upon receiving the grant from the General Government, the people were usually content to place in their constitution some finely phrased general statement, declaring that the trust should form a perpetual fund, and should be preserved inviolate. This done, the matter was left to the Legislature and State officers. The subject was not one to attract popular interest, and even the legislators themselves gave it little thought, save when they received petitions asking for some change, and a change, it must be borne in mind, invariably meant either a reduction in price or relief from past contracts.[3] The *ex-parte* statements of petitioners have generally been accepted, and the desired legislation passed. The citizens, as a whole, have paid not the slightest attention to a matter affecting the entire State, and involving hundreds of thousands of dollars. What was every-

[1] Constitution of Nebraska, Art. VIII., Sec. 9. Nebraska has erected many safeguards for the protection of her educational trust funds, and her constitution is worthy of study on these points.

[2] *Supra*, 76, 99, 113, and especially 84, note 1.

[3] I have run across but a single petition asking for an increase in the price of the land, or suggesting any thing for the benefit of the fund.

body's business became, as usual, nobody's.[1] The only remedy for this evil seems to be the establishment of certain definite regulations in the State constitution, since when a constitution is framing, and then only, is any popular interest in the subject likely to be manifested.

Fifth: *Special legislation.* A sufficient number of instances where special laws have been passed, always against the interests of education, have already been mentioned, such as relief laws, reduction of price in special cases, and repeal of revaluation clauses for particular townships. So long as special legislation is tolerated in such matters it must be expected that the cause of education will suffer. The remedy is simple, and, the younger States are beginning to apply it, by forbidding all special legislation in matters affecting the school funds.[2]

Sixth: *The attempt to divert educational funds from their proper object, or so to dispose of the lands as to accomplish other State purposes to the injury of the cause of education.* This evil has appeared openly in but two of the States—Illinois and Wisconsin. In the case of the former the seminary lands were thrown into the market at an extremely low price, more than a quarter of a century before any college was endowed or organized. The motive in selling the lands was unquestionably that the State might obtain money to meet its expenses without resorting to increased taxation. So flagrant an abuse can hardly occur in this day and age.

The other instance is the fixed and avowed policy of Wisconsin of offering her educational lands at low prices in order to attract immigrants. This policy has already been criticised in the sketch of the legislation of Wisconsin. There are those, however, who maintain that the State acted wisely; that she swelled her population, thereby adding to her wealth; and that, though the proceeds of her land grants are less than they might have been, her increased wealth

[1] "We have been the passive recipients of the bounty of the United States, and have by our *neglect* and mismanagement wasted thousands of dollars of this bounty."—Debates, Constitutional Convention, Indiana, 1851, p. 1891.

[2] See constitution of Oregon, Art. IX., Sec. 23; also the present constitution of Indiana, Art. IV., Sec. 22.

enables her to make good the deficit by annual taxation. This theory omits all notice of the fact that it is not generally considered lawful to use trust property in any other way than that specified in the instrument creating the trust, even though the trustee may see that by handling it differently he can profit the beneficiary more. But the theory itself is not confirmed by facts. The reports of the Land Commissioners and of legislative committees in Wisconsin show that, though much land was sold at the low prices established, the greater part of it was bought by speculators, who resold it to the actual settlers at far higher prices. There is nothing to indicate that the policy had any direct effect in attracting immigrants. The great quantity of government land and the natural advantages of soil and climate were far greater influences in that direction.[1] In any aspect of the question it seems almost beyond doubt that the State threw away a large part of her educational endowment.

While such uses of the federal grants are not likely to be made by other States, there are no certain means of preventing similar semi-diversions of the trusts from their proper objects. The only safeguard is a public sentiment that will not permit the spirit of a trust to be violated under cover of conformity with the letter.

It would be unjust to the five States under consideration to omit all reference to the good results which have flowed from their various land grants. Even though much has been wasted, through causes for which the States were wholly responsible, the grants have been instrumental, in a degree that cannot be estimated in mere dollars and cents, in promoting the cause of education. It is doubtful if with

[1] The view that the low price of educational lands had no perceptible effect on immigration seems to be borne out by the figures of the United States census reports, which show that the percentage of increase in population in Wisconsin over that in Michigan (a State of equal advantages and similarly situated) was greater in the decade from 1840 to 1850, when Wisconsin had not commenced selling her lands, than it was from 1850 to 1860, during which decade half her school lands passed into the hands of purchasers.

the wisest management the school land could have been made to maintain unassisted the work for which it was set aside. Perhaps the greatest benefit rendered by the funds has been in fostering among the people a desire for good schools. Without the land grants, the burden of maintaining free schools would have seemed oppressive to the new State, but aided by the income of the funds, the people have grown into a habit of taxing themselves heavily for the support of education. Thus the funds have made practicable a system of education which without them it would have been impossible to establish. Each one of the States now raises annually for the support of schools, by taxation, an amount of money many times larger than the income of the sixteenth section funds. Undoubtedly the schools would be still stronger had they the benefit of the wasted grants; yet in no one of the States is the cause of common-school education allowed to languish, because of the follies committed in managing the trust fund. In this way have the States made some reparation, though the present and future generations pay the penalty in heavier taxation for the mistakes of their predecessors.

What has been said of the common schools cannot be maintained of the colleges and universities endowed with the "seminary townships." The cause of higher education does not lie so near to the hearts of the people as does that of primary education. The common school is within the reach of every one, while the university can be used by but a small number of the youth of the State. Every cent of taxes laid for the benefit of a college is begrudged by a large part of the commonwealth, and not infrequently the State refuses to render any assistance whatever to its own university. It is then doubly important that the best possible management be displayed in handling the "seminary" land grant. Every dollar lost to the endowment fund by carelessness, or thrown away by hasty sales, cripples the college by making it more dependent on the State. In none of the States of the Northwest Territory is the institution receiving the benefit of the land grant self-supporting. Ohio

has made little attempt to atone for the errors that despoiled her State universities of their endowment. Michigan, Indiana, and Wisconsin within the last twenty years have nobly aided their State universities by large appropriations.[1] In Wisconsin the law making a permanent appropriation specifically declares that it is in *compensation* for deficiencies arising from the disposition of the seminary lands, and the same frank acknowledgment of error might with equal justice be made by the other States.

While these appropriations have been of great service to the beneficiaries, and go far to atone for past errors; and while there is manifest a constantly increasing willingness to afford the universities all needed facilities, they are nevertheless dependent on the State for an indispensable part of their income which may be withheld at any time; whereas, had the lands been wisely managed, the income from the funds alone might have been sufficient for all their needs through all time.

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[1] In Michigan, since 1873, a permanent annual tax of $\frac{1}{20}$th of a mill on each dollar of the taxable property has been levied for the benefit of the university. Up to January 1, 1883, the total appropriations for the university amounted to $896,671.

In Wisconsin the university receives the benefit of a permanent annual tax of $\frac{1}{8}$th of a mill on each dollar of taxable property. In addition to this the university has received from the State $235,769.84.

In Indiana the university receives a permanent annual appropriation of $23,000, and has besides received various special gifts from the State.

APPENDIX.

TABLE A.—School Lands.

	Amount of the Grant.	Acres Sold.	Present Fund from Proceeds.	Average per Acre.	Present Income.	Acres Unsold.	Estimated Value of Unsold Land.
Ohio . .	704,488 acres.	664,488 (*a*)	$3,713,962.53 (*b*)	$5.58	$220,496.59	40,000 (*a*)	
Indiana . .	650,317 "	643,077	2,375,061.88	3.69	196,204.61	7,240	$95,092
Illinois . .	985,066 "	976,553	3,696,081.07	3.78	536,456.55 (*c*)	8,513 (*d*)	2,625,610
	2½ per cent. of sales of public land.		613,362.96		36,801.78		
Michigan . .	1,067,397 acres.	715,761	3,281,963.42	4.58	226,651.95	351,636	Held at $4 per acre.
Wisconsin .	1,458,649 "	1,294,110	2,429,010.30 (*e*)	1.87	190,189.56	164,539	Held at $1 and $1.25 per acre.
	5 per cent. of sales of public land.		309,035.28				

(*a*) Approximate.
(*b*) A large part of the income was for several years added to the principal, hence the fund represents more than the bare proceeds of sales.
(*c*) Includes rents of unsold lands (a large item) and income from swamp-land fund.
(*d*) Mainly in Chicago, hence their great value and high rent.
(*e*) $75,000 has been deducted as a fair estimate of the amount accruing to the fund from fines, escheats, etc. The amount since 1870 has been over $50,000.

TABLE B.—Agricultural College Grant.

	Beneficiary.	Acres in Grant.	Acres Sold.	Present Fund.	Average per Acre.	Present Income.	Acres on Hand.	Estimated Value.
Ohio . .	Ohio State Univ.	630,000 scrip	630,000	$558,529.00 (*a*)	$0.85	$31,621.73		
Indiana .	Purdue "	390,000 "	390,000	340,000.00 (*a*)	0.87	17,000.00		
Illinois .	Ill. Industrial "	480,000 " & place	455,000	319,178.87	0.70	19,010.00	25,000	
Michigan	State Agr'l College	240,000 place	105,751	367,117.24	3.47	22,629.65	134,249	$671,245.00
Wisconsin	Univ. of Wisconsin	240,000 "	220,111	279,689.84	1.27	17,910.91	19,889	24,861.25

(*a*) Increased by funding—actual proceeds of sales much less.

TABLE C.—Swamp Lands.

	Acres Claimed under the Act making the Grant.	Acres Patented to the State up to the Present Time.	Proportion of Proceeds Devoted by the State to Education.	Present Fund from Proceeds.	Disposition of Proceeds. Present Income.	Acres Unsold.
Ohio	54,458.14	25,640.71	Total net.		$6,000 distributed (*a*)	
Indiana . . .	1,354,732.50	1,252,708.21	" "	$38,077.59		
Illinois . . .	3,267,470.65	1,451,974.78	" "	$1,000,000.00 (*b*)	Included in school-fund income.	
Michigan . . .	7,373,804.72	5,659,217.14	50 per cent. cash sales.	$337,996.54	$16,713.92	
Wisconsin . .	4,200,705.85	3,071,459.61	50 per cent. of the lands.	$1,165,041.20	74,106.76	476,602 (*c*)

(*a*) Approximate. The proceeds have been distributed, hence no fund has accumulated.
(*b*) Estimated. See page 82.
(*c*) This is the amount unsold of the fifty per cent devoted to education.

TABLE D.—Saline Lands.

	Acres.	Proceeds.	Proceeds Itemized.	Income.	Object to which Proceeds were Devoted by State.
Ohio . .	24,216	$41,024.05			Schools.—No income distributed since 1845. Principal used by the State.
Indiana .	23,040	89,480.47		$5,858.26 (*a*)	Schools.
Illinois (*b*) .					
Michigan .	46,080	197,446.04	$64,000.00		Deaf and Dumb Asylum.—Proceeds themselves used.
			56,320 00		Agricultural College.— " " "
			8,000.00		Normal School Building.— " " "
			69,126.04	4,322.42	" " Endowment Fund.
Wisconsin (*b*)					

(*a*) Approximate. (*b*) Not used for educational purposes in this State.

TABLE E.—University Lands.

	Beneficiary.	Amount of Grant.	Acres Sold.	Present Fund.	Average per Acre.	Present Income.	Acres Unsold.	Estimated Value of Unsold Land.
Ohio . .	Ohio University	46,080 acres	Leased.		[$2 00]	$7,200.00		
	Miami "	23,040 "	Leased.		[4.00]	5,600.00		
Indiana .	Vincennes "	23,040 " (*a*)						
	Indiana "	69,256 "	60,730	$139,036.74	2.29		8,526 (*c*)	
Illinois .	Normal Universities	46,080 "	46,080	68,838.72	1.49	4,130.32		
		½ per cent. of sales of public land.		156,613.32		9,396.80		
Michigan	Michigan University	46,080 acres	45,792	543,317.66	11.87	38,325.33	288	Held at $12 per acre.
Wisconsin	Wisconsin "	92,160 "	89,989	228,438.83 (*b*)	3.71	14,149.52	2,171	Held at $3 per acre.

(*a*) No data accessible from which to obtain further figures.
(*b*) Add $104,339.42 used for the erection of buildings, making proceeds of sales $332,778.25. The State, by tax, makes good to the University the income on the amount thus diverted.
(*c*) This is the amount unpatented according to the books of the State, but nearly all of it has really been sold. See page 130.

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IN ITS

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SEPTEMBER 9, 1885

BY THE

RIGHT REVEREND C. F. ROBERTSON, D.D.

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THE LOUISIANA PURCHASE IN ITS INFLUENCE UPON THE AMERICAN SYSTEM.

HAVING my residence in a portion of the Union which was never under the British flag, but was acquired in that large accession of territory secured to this country from France at the beginning of this century, I am naturally interested in the transaction itself, and in the marked results which it has left upon our American system. In this interest I am well assured that all students of our country's history, who seek for the causes of the present in the past, will largely share.

That this addition to our national domain was not an insignificant one, may be in part inferred from the fact that it added to the United States a territory nearly four times as large as that comprised in the original thirteen United colonies; and, according to the last census, had in it a population of nearly one-fourth of that of the entire country.

The acquisition of the Louisiana territory was not caused by the pressure of population in the older portions of the country, crowding out the frontiers, and compelling expansion. The regions west of the Alleghanies were in any part only sparsely settled, and in the greater portion the Indian titles were not extinguished, and many parts were unexplored.

At the same time, the enormous productiveness of the soil about the settlements in Ohio, Kentucky, and Tennessee was making necessary an outlet more convenient than the laborious journey to the East across the mountains. Given a soil like that of the great interior valley of this

country, and it would be but a question of time when possession of the mouth of the Mississippi River would be demanded and conceded to this country. A full understanding of the great value of this outlet was had by Spain and France; and therefore the varied forms of hindrance interposed by them to our acquisition of the possession of it are natural and intelligible. They knew that the power which controlled the mouth of the river must inevitably become the dominant factor on this hemisphere. The steady, inexorable pressure of Anglo-Saxon force among the upper waters at length thrust out all opposing European power at its outlet. The needs of Napoleon and the fear of England were the exigencies in Europe which were the immediate occasion of the cession; but the result would have been the same within a short time, even without this emergency.

The cession of the vast territory west of the Mississippi was but an accident. The main object sought was an uncontrolled and uninterrupted passage out of the river, and a market for the teeming products of the Mississippi valley. Talleyrand almost thrust[1] into our indifferent hands the regions to the west of the great river. All that our ministers insisted upon was the island of New Orleans, to the east, and at the mouth of the river, where could be the place of deposit and port of transshipment of our goods. In the carelessness as to the value and possession of the vast trans-Mississippi region, and in the difficulty of compassing the price which Napoleon asked, Mr. Livingston, our Minister in Paris, even suggested to Mr. Madison that, if only New Orleans and the Floridas could be kept, the purchase-money to be paid might be realized by the sale of the territory west of the Mississippi River, along with the right of sovereignty, to some power in Europe, whose vicinity we should not fear.[2]

The knowledge that the purchase of the territory was actually possible, and the details as to the amount and manner of purchase, only reached President Jefferson, and

[1] Gayarré: "Span. Dom.," p. 502.
[2] Gayarré: "S. D.," p. 509

the people of this country, after the transaction had been completed. There was deep agitation on the subject, and insistence here. Mr. Monroe was sent over by the President to join Mr. Livingston, the better to conduct the delicate business. He reached Paris, however, only after the matter had been virtually closed. Napoleon was as changeable as a girl. Every day his mood varied. It had been the dream of his life to establish a transatlantic empire. He was watching the news from London where the war-clouds were gathering, and did not wish to lose a sale for Louisiana, and cause it to fall into the hands of the British, who had a fleet in the Gulf of Mexico ready to fall upon it, in case that hostilities should be declared. In twenty days after he gave his consent to the sale, the convention was signed, with all the particulars concerning the amount to be paid, and when and how it should be paid. The Ambassadors, knowing the temper in America, had to take the risk that their work would be ratified at home.

The purchase was a transaction for which in this country there had been no precedent. While it marked a vast accession to the national domain and strength, still there were interests which conceived that they were injured by the purchase, and which, therefore, raised objections to it. Mr. Jefferson [1] admitted that the purchase and annexation were unauthorized, and even proposed an *ex-post-facto* amendment of the constitution, to give sanction to the measure. He wrote [2], "The Constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into the Union. The Executive, in seizing the fugitive occasion which so much advances the good of the country, has done an act beyond the Constitution. The Legislature, in casting behind them metaphysical subtleties, and risking themselves like faithful servants, must ratify and pay for it, and throw themselves on their country for doing for them unauthorized what we know they would have done, had they been in the situation to do it." At the same time,

[1] Adams : "Federalism of New England," p. 54.

[2] Jefferson's Works, iv., p. 500, etc.

Mr. Jefferson observed that the less that was said about any constitutional difficulty the better, and that it would be desirable for Congress to do what was necessary in silence. Mr. Monroe had written from Paris that there was reason to believe that, if the thing were to be done over again, it could not be obtained, and that if the least opening was given, the French would declare the treaty void. For this reason Mr. Jefferson thought that, whatever Congress should deem it necessary to do, should be done with as little debate as possible, and particularly so as respecting any constitutional difficulty.

The general position of Mr. Jefferson in regard to the Constitution required him to hold that Congress possessed no residuary powers, only such as were distinctly created by that instrument. At the same time he knew that nothing must be said that would give France a pretext for retracting. And so he wrote to Mr. Breckenridge, the Senator from Kentucky, and sent the draft of a proposed new article of the Constitution: "Louisiana, as ceded by France to the United States, is made a part of the United States," and asked him to desire the presence of every friend of the treaty on the first day of the session, in order that it might be quietly and expeditiously passed; and to send private letters for this purpose especially to the Senators of all the western States. But Mr. Breckenridge[1] held to the inherent right of the United States to acquire territory, and so no constitutional amendment was proposed. The terms of the treaty were ratified by Congress, and Louisiana, as ceded by France to the United States, was made a part of the United States, with a provision that its white inhabitants should be citizens, and stand on the same footing with other citizens in analogous situations. As to the territory, however, lying north of an east and west line drawn through the mouth of the Arkansas River, no new State was to be established out of it, until the action of Congress should be had.

Even after the purchase it was not known what had been bought. The tract extended vaguely off to the north, and

[1] *Mag. Am. Hist.*, Aug. 1885, p. 199. Jefferson's Works, iv., 498.

toward the South Sea; but, for scores of years afterward, there was very little idea of all that it included. There were very few white people living in the purchased territory then. There were some settlements on the lower Mississippi in the Teche country, and along the Red and Washita rivers; a few at the mouth of the Arkansas. Farther up, there were the settlements at New Madrid, St. Genevieve, and St. Louis. As for those on the Missouri River, the explorers, Lewis and Clarke, reported, a few months after the purchase, that they left the last establishment of the whites at La Charette, only fifty-four miles from the mouth of the river.[1] Almost all the whites who lived in the territory were French, and mainly from Canada.

There was a natural disposition, directly after the purchase, to ascertain somewhat more clearly what had been acquired. As the treaty of purchase was signed on the 30th of April, during the same summer Mr. Jefferson planned the expedition under Meriwether Lewis and William Clarke, to explore the course of the Missouri River, cross the Rocky Mountains, and follow the waters of the Columbia to the Pacific Ocean. They started from St. Louis in the spring of 1804, and, having accomplished their task, returned in September, 1806. In the summer of 1804, the exploration of the Washita River was made by Mr. Dunbar, of Natchez, by order of the President. In August, 1805, Captain Zebulon Pike started up the Mississippi to discover its source. He was absent about eight months. In July, 1806, after his return, he started with a party up the Missouri River, and then up the Osage, crossing over to the Arkansas and the Red. By mistake he passed the Spanish frontier into New Mexico, was taken prisoner, and in July, 1807, was conducted out to the American posts at Natchitoches.[2] Later, the publication of the journal of this expedition, with its description of the interior of New Mexico and Texas, was a strong inducement to the removal of many to these regions.

By means of these surveys a very great increase was had

[1] Lewis and Clarke Exp., i., 7.

[2] Pike's Journal, Voy. Sources Ark., p. 202.

in the knowledge of the natural features and resources of the vast region that had been acquired. Later still, other expeditions were set on foot. In 1819, Major Long was directed to ascend the Missouri River, for the purpose of exploring the regions west of the Rocky Mountains. In the same year, General Cass, Governor of the Northwestern Territory, with the assistance of Mr. Calhoun, then Secretary of War, sent Mr. Schoolcraft to explore the sources of the Mississippi River with greater exactness than had been possible by Captain Pike.

The boundaries of the territory were not fully determined for a number of years. The northwestern angle of the territory of the United States, at the time of the purchase, was the point at which a line stretched due west from the most northwestern point of the Lake of the Woods would strike the Mississippi River.[1] The next step was taken in the treaty of 1818, when it was declared that the boundary line between this country and Canada should be a line drawn due south from the most northwestern point of the Lake of the Woods, until it should intersect the forty-ninth parallel of north latitude, and then should follow that parallel to the Stony, or Rocky, Mountains. It was furthermore agreed that any country that might be claimed by either party on the northwestern coast of America, westward of the Stony Mountains, should be free and open for the term of ten years, without prejudice to the citizens of the two powers. In a convention, dated on the sixth of August, 1827, the provisions of the treaty of 1818 were extended for an indefinite period, either party to give twelve months' notice of its intention to annul or abrogate the same.

At this point the matter rested, until the treaty of 1846, which carried on the boundary along the forty-ninth parallel, from the Rocky Mountains to the middle of the channel which separates the continent from Vancouver's Island, and thence south through the middle of the said channel, and of Fuca Straits to the Pacific Ocean.

To the southwest, the boundary was not settled until the

[1] Treaties U. S., p. 276.

treaty was ratified with Spain, on the twenty-second of February, 1819,[1] when the line was fixed, as beginning, at the Gulf of Mexico, at the mouth of the Sabine River, in the sea, continuing north along the west bank to the thirty-second degree of north latitude, being the northwest corner of the State of Louisiana; thence due north to the Red River, following the same westward to longitude one hundred degrees west from London, and twenty-three from Washington; thence crossing the Red River, and running due north to the Arkansas River; thence along the southern bank of the same to its source in latitude forty-two north, and thence by that parallel of latitude to the South Sea. If the source of the Arkansas was found to be north or south of latitude forty-two, then the line was to run north or south to that degree, and thence along that line to the South Sea.

By the charter of Louis XIV.,[2] the country purchased to the north included all that was contiguous to the waters that flowed into the Mississippi. Consequently its northern boundary was the summit of the highlands in which its northern waters rise. By the tenth article of the treaty of Utrecht, France and England agreed to appoint commissioners to settle the boundary, and these commissioners, as such boundary, marked this summit on the forty-ninth parallel of north latitude.[3] This would not carry the rights of the United States beyond the Rocky Mountains. The claim to the territory beyond was based upon the principle of continuity, the prolongation of the territory to the adjacent great body of water. As against Great Britain, the claim was founded on the treaty of 1763, between France and Great Britain, by which the latter power ceded to the former all its rights west of the Mississippi River. The United States succeeded to all the rights of France. Besides this, there was an independent claim created by the discovery of the Columbia River by Gray, in 1792, and its

[1] Treaties U. S., p. 787.

[2] Jefferson's Works, vii., 51. Marbois, p. 284, Eng. tra.

[3] Barbe Marbois, p. 263, Eng. tr.

exploration by Lewis and Clarke.[1] All this was added to by the cession by Spain in 1819, of any title that it had to all territory north of the forty-second degree.

The western boundary of the territory was the Rio Bravo, from its mouth to its source, and thence along the highlands and mountains dividing the waters of the Mississippi from those of the Pacific. The line along the highlands was based upon the charter of Louis XIV. That of the Rio Bravo stood on the fact that when La Salle took possession of the Bay of St. Bernard, Panuco was the nearest possession of Spain, and the Rio Bravo was the natural boundary half-way between them.

Such were the boundaries of the vast territory acquired from France in 1803.

It could not be otherwise than that the addition of this great domain to the South and West would have a tendency to create apprehensions that the equilibrium of the political and commercial interests of the Union would be thereby disturbed. The addition of such weight on one side of the ship of state would threaten dangerous oscillations in the steady bearing of the vessel. Of course at first the enormous area was but a geographical expression; it was an unknown quantity as to its value or resources. Like the powers hidden in the youth, they could only be gradually apprehended and brought into play. But even at the outset, there were conditions at the time in the temper of the country which caused the purchase of the Louisiana territory to deepen irritations and alarm which had been created and fostered by other considerations.

The business and prosperity of the country were poised between the two rival and contending interests of agriculture and commerce. Manufactures were not as yet arresting much attention. Steam had not begun to be applied largely to machinery. Eli Whitney was now just perfecting his cotton-gin, and thus enabling that fabric to be cheaply made into cloth. The country had still to look abroad for the simplest of manufactured articles. Speaking broadly, the

[1] Rush. Resid. in London, pp. 105–407.

South represented the interests of agriculture, while commercial pursuits dominated in the North.

At a time when there were great public burdens, resulting from the War of the Revolution, to be distributed, and taxation to be laid with even pressure upon those little able or disposed to accept it, it became a matter of the most anxious concern that the load should be distributed fairly, and with no discrimination against any interest. For this reason the constitution of the representative body which was to impose the taxes and to make the laws, became a subject of great importance. So delicate was the equilibrium in Congress, that the admission of Kentucky into the Union was held back until the counterpoise was had in the admission of Vermont.[1] The opposition in the Senate to the ratification of the treaty of the purchase of Louisiana was wide and outspoken. Uriah Tracy, of Connecticut, said, concerning the acquisition: "If done at all, this should be done by universal consent; and this universal consent, I am positive, cannot be obtained to such a pernicious measure as the admission of Louisiana—of a world, and such a world!—into our Union. This would be absorbing the Northern States and rendering them insignificant in the Union, as they ought to be if by their own consent the measure should be adopted."[2] The vote to ratify the treaty passed the Senate by a vote of twenty-six to six, these latter votes in opposition all being from New England.

The issues of political partizanship were further embittered by the division of the country into hostile parties: the one urging the need of strong central authority, the other emphasizing the original and indefeasible rights of the States; the one magnifying the benefits coming from the recently adopted Constitution, and the other seeing in it the danger of an aristocracy or royalty. Political divisions were created also by the commercial complications which were occasioned by the vast struggle between France and England being carried on, in which we, as the principal carrying nation, had large stakes. The result was a condition of political acrimony, of

[1] Bancroft, Const., i., 373. [2] Annals Cong., 8th Cong., 1st Sess., p. 58.

which the country since has known none more intense or virulent.

In the winter, therefore, of 1803–4, immediately after, and as a consequence of, the acquisition of Louisiana, certain leaders of the Federal party conceived the project of the dissolution of the Union, and the establishment of a Northern Confederacy. The justifying causes to those who entertained it were, that the annexation of Louisiana to the Union transcended the constitutional powers of the government of the United States; that it created, in fact, a new confederacy, to which the States, united by the former compact, were not bound to adhere; that it was oppressive to the interests and destructive to the influence of the Northern section of the Confederacy, whose right and duty it therefore was to secede from the new body politic, and to constitute one of their own. It was lamented that one inevitable consequence of the annexation of Louisiana to the Union would be to diminish the relative weight and influence of the Northern section; that it would aggravate the evil of the slave representation; and endanger the Union itself, by the expansion of its bulk, and the enfeebling extension of its line of defence against foreign invasion. A Northern Confederacy was thought to be the only probable counterpoise to the manufacture of new States in the South.[1]

This project was quietly and extensively discussed at the time,[2] by the members of Congress from Massachusetts and Connecticut especially. General Hamilton, indeed, was chosen as the person to be placed, at the proper time, at the head of the military movement which, it was foreseen, would be necessary for carrying the plan into execution.[3] He was consulted on the subject; and although it is quite certain that he was opposed to it, he consented to attend a meeting of Federalists in Boston in the autumn of 1804, but his untimely death, in the summer of that year, prevented the meeting.

To whatever proportions, however, the project might

[1] Adams' "Feder. in N. E.," p. 77. [2] *Ib.*, pp, 107, 146.
[3] Adams' Fed., p. 53.

otherwise have gone, it was checked by the advantage which was evident to all of the securing of so large a domain, by the great desirableness of preventing France from holding the mouth of our great river, and by the settlement of the question of our national boundaries. These considerations gave a quietus for a time to the suggestions of sectional jealousy. Occasions somewhat later, however, gave them renewed activity.

The jealousy of Great Britain at the prosperity of our commerce caused her, at first, in 1805, to re-enact her obsolete rule of war of 1756—that no trade of a neutral nation with a belligerent power, in time of war, is lawful, except a trade which had been lawful between the same parties in time of peace. When this was resisted by the United States as opposed to the law of nations and oppressive, it was only replaced by the proclamation, aimed at Napoleon, but instantly affecting us, of a sweeping blockade of the whole coast of Europe from the Elbe to Brest.

This, while greatly injurious to France, laid our commerce under the peril of being seized as prizes. Napoleon retaliated by the Berlin decrees of the twenty-first of November, 1806, declaring the British Islands in a condition of blockade, and forbidding the admission into France of any vessels which had been to England since the publication of the decree. As against this action, the Orders in Council were issued on the seventh of January, 1807, by Great Britain, which subjected to capture and condemnation every neutral vessel and cargo bound to any port or colony of any country with which Great Britain was then at war, or from which British vessels were excluded. Napoleon soon after followed with the proclamation of the Milan decrees on the seventeenth of December, 1807, which declared every vessel which should have submitted to be searched by an English ship, or been on a voyage to England, or should have paid any tax to the British Government, denationalized, and subject to capture and condemnation.

The effect of all these proclamations, together with the vague claim of impressment of our seamen, was to cripple

our carrying trade. President Jefferson therefore, for the safety of our commerce, in view of the decrees and orders, on the twenty-second of December, 1807, recommended the enactment of embargo laws, which were passed, by which all vessels within the jurisdiction of the United States were forbidden to leave, except that foreign vessels might leave in ballast, or with the goods which they had on board at the time that the notice of the embargo was received. Of course the result of the embargo was to put a stop to all our commerce. Vessels were decaying at their wharves. The distress in the cities became pitiful. It was alleged by the Federal party that the law was designed as a help to France, because it had no navy.

The distress was most deeply felt in New England, and it concurred with the political animosities of the time in stirring into renewed life the project for a Northern Confederacy, which had slumbered since shortly after the purchase of Louisiana.

The embargo laws were, on the first of March, 1809, repealed, and the non-intercouse law passed, by which all intercourse with Great Britain and France was forbidden; except that, if either power should modify its hostile action, then trade with that power might be resumed. The letter of Mr. Pickering to Governor Sullivan of Massachusetts, denouncing the general government and the embargo, and calling upon the commercial States to make common cause against the alleged oppressions, intensified the discontent.

The degree of interest felt by Great Britain in the apparent loosening of the bonds of union, and her disposition to foment the trouble, and profit by it, was shown in the mission of Mr. Henry to the New England States by the Governor-General of Canada. The consternation in Congress was extreme, when, on the tenth of March, 1812, President Madison sent [1] in a message, communicating the entire correspondence between the Governor-General and Mr. Henry, who was an Englishman, familiar with the States, and had been employed in the spring of 1809 to pass through the Eastern

[1] Niles' Reg., ii., 68.

States and observe the degree of defection from the government, and place himself in communication with any persons who were disposed to address or approach the English authorities with a view to a better accommodation of their section with the British Government. Mr. Henry revealed the correspondence because of the failure of the English ministry to remunerate him according to his supposed deserts. There was never, however, any doubt as to the genuineness of his authority, nor of the truth of his representations.

The Governor, in his instructions to Henry, states that "it has been supposed that if the Federalists of the Eastern States should be successful in obtaining that decided influence which may enable them to control public opinion, it is not improbable that they will exert that influence to bring about a separation from the general Union." Henry proceeded through Vermont to Boston, and wrote back the observations that he had made from time to time, using an assumed name. He writes from Boston, on the seventh of March, 1809: "Should the Congress possess spirit and independence enough to place their popularity in jeopardy by so strong a measure, the Legislature of Massachusetts will give the tone to the neighboring States, will declare itself permanent until a new election of members, invite a congress to be composed of delegates from the Federal States, and erect a separate government for their common defence and common interest." * * * "What permanent connection between Great Britain and this section of the republic would grow out of a civil commotion, such as might be expected, no person is prepared to describe. But it seems that a strict alliance must result of necessity." [1]

Eight days after, Henry wrote: "To bring about a separation of the States, under distinct and independent governments, is an affair of more uncertainty; and, however desirable, cannot be effected but by a series of acts and long-continued policy, tending to irritate the Southern and conciliate the Northern people. The former are agricultural, the latter a commercial people. The mode of cheering or de-

[1] Carey's "Olive Branch," p. 152, etc.

pressing either is too obvious to require illustration. This, I am aware, is an object of much interest to Great Britain, as it would forever secure the integrity of his Majesty's possessions on this continent, and make the two governments as useful and as much subject to Great Britain as her colonies can be rendered." * * * "I lament the repeal of the embargo, because *it* was calculated to accelerate the progress of these States toward a revolution that would have put an end to the only republic that remains to prove that a government founded on political equality can exist in a season of trial and difficulty, or is calculated to ensure either security or happiness to a people."

Mr. Henry continued to report with complacency the seditious expressions used in the newspapers of Boston and by public speakers; and on the twentieth of March declared that it should be the peculiar care of Great Britain to foster divisions between the North and the South; and that the men of talents and property preferred the chance of maintaining their property by open resistance and final separation to an alliance with France and a war with England.

While in Boston, Mr. Henry mingled freely in good society, and entertained handsomely; but he mentions in his letters the names of none with whom he was specially in communication. As Great Britain withdrew the Orders in Council about this time, the strain in the relations of the two countries was temporarily relaxed, and Mr. Henry was withdrawn. President Madison paid him $50,000 for the information, and Henry stipulated that the names of persons concerned should not be insisted upon.

The excitement produced by this evidence of the disposition of Great Britain to foster divisions in the United States, was one of the exciting causes of the proclamation of war with Great Britain, which took place on the eighteenth of June, 1812. The Federalists put out an address in opposition to the war, because, by shutting up the commerce of the Eastern States, it was involving them in loss and distress. The governors of Massachusetts and Connecticut[1] declined

[1] Dwight's "Hartford Conv.," p. 247.

to answer to a requisition from the President for troops, except as they should be used to repel invasion, and refused to yield the command of the State militia to the officers of the regular army. The Legislature of Massachusetts issued an invitation to the Legislatures of the other interested New England States, to appoint delegates to meet in convention to consider their grievances and recommend measures of redress.

The Hartford Convention met on the fifteenth of December, 1814, at which delegates were present from all the New England States. It was opposed to the war with England, and was unwilling to contribute to its prosecution. It was offended at the measures of the several administrations whose executive head had been from Virginia, as those measures had been disastrous to the commercial interests of New England. It objected to the authority over the State militia by the general government, and of its claim to command them, and its assertion of power to use the troops beyond the borders of the State.

The convention found the final cause of these evils—and here the matter connects itself with my subject of the results following upon the acquisition of Louisiana,—in the threatened inordinate growth of the country to the west and the southwest. It therefore put forth the declaration that the admission of new States into the Union, formed at pleasure in the Western region, has destroyed the balance of power which existed among the original States, and deeply affected their interests. It expressed the belief[1] that the Southern States will first avail themselves of their new confederates in the West, to govern the East; and finally the Western States, multiplied in number, and augmented in population, will control the interests of the whole. It therefore resolved that amendments to the Constitution of the United States should be recommended to the States represented, to be proposed by them for adoption by the State Legislatures; and that the States should persevere in their efforts to obtain such amendments, until the same should be effected.

[1] Dwight's "Hartford Conv.," p. 371.

Among the amendments thus proposed, having in view the object of checking the creation of new States out of the recently acquired territory, now rapidly filling with population, were these:

(*a*) The exclusion of slaves from the basis on which representation was proportioned.

(*b*) The requisition that in the admission of new States, the concurrence of two-thirds of the members of both houses should be necessary.

(*c*) A prohibition of Congress from interdicting commercial intercourse with foreign nations, except with the concurrence of two-thirds of both houses of Congress.

(*d*) The requisition of the concurrence of two-thirds of both houses of Congress, in order to the declaration of war or the authorization of acts of hostilities against foreign nations, except in defence.

(*e*) The provision that the President should be eligible only for a single term, and not be chosen twice in succession from a single State.

An incidental evidence of the anxious effect upon President Madison's mind of what he conceived to be the seditious spirit shown in the Northeast, is had in a letter written by Wm. Wirt to his wife in October, 1814.[1] "I called," he says, "on the President to-day. He looks miserably shattered and woe-begone—in short, heart-broken. His mind is full of the New-England sedition. He introduced the subject, and continued to press it—painful as it obviously was to him. I denied the probability, even the possibility, that the yeomanry of the North could be induced to place themselves under the power and protection of England, and diverted the conversation to another topic; but he took the first opportunity to recur to it, and convinced me that his heart and mind were painfully full of the subject."

The irritation which had called forth the remonstrances of the Hartford Convention had been intensified by the ill-success of the military operations of the war; the ineffectual and vexatious efforts to subjugate Canada, the surrender of

[1] Wirt, i., 349.

General Hill, and the apprehensions of the capture of New Orleans by the British. The conclusion of peace, however, just at this time, and the brilliant victory of Jackson at New Orleans, even before the adjournment of the Convention, gave a halo of popularity to the administration, and threw an odium upon the spirit and results of the convention. The proposed adjourned meeting in Boston, of course, never took place.

Emergencies, as they arose in the nation's life, were causing the people to see that, for the practical administration of the government, there must be an efficient central power. The days of the Confederation were past. The members of the convention, in their hope of amending the Constitution, had made too little account of the presumption that attaches to the settled order, and the utter unlikelihood that those in power would reduce their own relative strength. In the make-up of the convention, moreover, there was much fine intellectual power; but, for any hope of making their conclusions effectual, there was an absence of tough, physical strength, such as would, in the last resort, fight, in order to carry out its will.[1]

If it seemed to be a simple and felicitous thing to add the large domain of the Louisiana purchase to the United States, it was found to affect profoundly the relations of all the parts; and for many years the apprehensions occasioned by the acquisition of so much territory to the South and West disturbed the country, and embittered the political complications, even in the remotest portions of the Union.

The steady movement of population westward received an impetus from the Louisiana purchase. New settlements were founded, and communities which before had been almost wholly made up of those of French birth and extraction came to have in them a large infusion of Americans. There was an element of venture and danger in this large movement of population, such as vested it with a degree of romance. Americans, too, as they went, were zealous propagandists of the blessings of civil liberty which they had

[1] Adams' Fed., p. 410.

themselves only recently achieved. The times were full of commotion. France, indeed, had passed from the throes of revolution under the strong hand of Napoleon; but the restlessness under absolute rule had communicated itself to peoples beyond our borders on this side of the Atlantic, and there was everywhere a readiness for revolt. The results of the American conflict, and now the steady pressure of our influence and control in the West and South, seemed to have put upon our people the office of extending free institutions to the suffering nations beyond our frontiers. Hopes and eyes were fixed upon this young land, in the expectation that it would offer help to all incipient movements towards revolution in the Spanish provinces in Central and South America.

Then, in this new country, there were adventurers, with broken fortunes, ever ready to hope that glory and wealth might be found in the regions beyond. There were political dreamers who desired to try new social experiments in fresh fields. The Revolutionary war was not so distant but that there were many old soldiers, restless in civil life, who were impatient to take up arms again for any worthy cause.

The direction to which such adventurous spirits, in view of the Louisiana purchase, would push out turbulent enterprises was towards the provinces about the Gulf of Mexico, upon which the Spanish rule was bearing heavily. Commercial enterprise, which sought to open new avenues of trade in ports now closed by the restrictive system of the Spanish, joined with restless ambition, and gave, at least, secret countenance to schemes which proclaimed as their mission, the emancipation of oppressed nations from political thraldom.

Within a few months after the acquisition of Louisiana, there came to this country a South-American adventurer who sought to arouse interest in a project for sending out an expeditionary force to capture Caraccas, and make this the starting-point for an overturning of Spanish power all through South America. The expedition of Miranda did not sail from New York until February, 1806, but it had been maturing for a long time before this.

As far back as 1797, General Miranda, who had been in this country during the Revolutionary war, and had then become inspired with a desire to free his native land, approached Pitt, the British Minister, with a plan, to seek his aid, together with that of the United States, in an effort to free his country from the Spanish rule. Great Britain was at that time at issue with Spain, with regard to Nootka Sound. While there was not much local disposition to revolt, the weakness of Spain was counted on, and England was disposed to look favorably upon the project.[1]

A formal proposition was made that England should furnish a fleet, and the United States a land force; that Great Britain was to have a favorable treaty of commerce and free use of the Isthmus of Panama and the Lake of Nicaragua; that South America was to pay Great Britain thirty million pounds sterling for its assistance; that the United States should have, in return for its assistance, the Floridas, Louisiana, and the Mississippi River.[2] Miranda wrote to Alexander Hamilton, who was not then in public life, but had great influence with the members of President Adams' cabinet, stating to him the proposals which had been made to Pitt, and that Pitt was disposed to look favorably upon them.

When in January of this year the President wrote to his cabinet ministers asking their advice as to the position which the United States ought to take as toward France, Mr. McHenry, the Secretary of War, replied to him, among other things, that he thought it would be well to approach Great Britain with an overture to obtain a loan, the aid of convoys, and perhaps the transfer of ten ships, so that in case of a rupture with Spain, the coöperation of England should be had, the object of which should be the conquest of the Floridas, Louisiana, and Spanish South America; of which all the territory on the east side of the Mississippi River, with the port of New Orleans, was to be the part of the spoils allotted to the United States.[3] This was the identical proposition which Miranda had laid before Pitt, and had detailed

[1] Adams' Works, i., pp. 523, 679.; viii., p. 569, etc.
[2] *Edin. Rev.*, vol. 13, 277. [3] J. Adams' Works, viii., 571.

to Hamilton, and which Hamilton induced McHenry to lay before the President.

By the treaty of Ildefonso, on the nineteenth of August, 1796, France and Spain had guaranteed each the dominion of the other; therefore they had common cause. The United States was at this time infuriated over the publication of, as it was called, the X, Y, and Z correspondence, in which the rapacity of Talleyrand had demanded a large bribe as the price of the alliance of France. Spain had virtually closed the Mississippi by denying the right of deposit at New Orleans. The country was aroused. The cry went out: "Millions for defence; not one cent for tribute!" Eighty thousand troops were called out. Washington was appointed commander-in-chief. Hamilton was made major-general, and second in command.

Spain was rather the valet than the ally of France. The best way to strike France, which had insulted this country, was to strip Spain of its colonies. Spain was weak; France was too much occupied in Europe to help Spain; Great Britain favored the spoliation. Hamilton was not disposed to go to all the trouble and expense of war against France for little result. If Spain, by closing the mouth of the Mississippi River, invoked war, that war should go on to offensive operations. Hamilton wrote to the chairman of the Senate Committee on Military Affairs: "If we are to engage in war, our game will be to attack where we can. France is not to be considered as separate from her ally. Tempting objects will be within our grasp." To make a great empire in South America, with principles akin to those of the United States; this was a worthy dream. Hamilton, his son declares, hoped that his name would descend as the Liberator of South America.[1] As he put it before himself: "The independence of the separated territory, under a model government, with the joint guaranty of the coöperating powers, stipulating equal privileges in common; this would be the sum of the results to be accomplished."

On the twelfth of February, 1799, Hamilton wrote to Gen.

[1] J. C. Hamilton's "History U. S.," vii., 218.

Wilkinson, then commander of the army, at New Orleans, asking him, as Washington was unable then to act, to meet him in Philadelphia, in order to confer as to the disposition of the forces in the West and South, in view of a probable attack by the French upon the South in case of the breaking out of hostilities.[1]

In reply to Miranda's letter to him, Hamilton wrote to Miranda, through Rufus King, the American Minister in London: "I could personally have no participation in it, unless patronized by the government of this country. * * * The plan, in my opinion, ought to be a fleet of Great Britain, an army of the United States, a governor of the liberated territory agreeable to both the coöperators. We are raising an army of about twelve thousand men. General Washington has resumed his station at the head of the army. I am appointed second in command." It is altogether probable that the strong desire of Hamilton to have precedence in the proposed army, immediately after Washington, and therefore his successor in command in case of his death, which occurred a few months after, or his inability to take rank over Pinckney and Knox, matters which were warmly discussed at the time, came from Hamilton's wish to command the forces which he was determined should not cease their operations until they were employed in what he deemed their most important business, of helping the revolution in South America, and emancipating the oppressed colonies from Spanish rule.[2]

On the nineteenth of October Miranda replied that Hamilton's views were approved by the British Minister, that the land-force would consist of American troops, and the marine be English; that every thing was ready, and only awaited the fiat of the President; and that an intended insurrection in South America had been deferred to await the action of the coöperating powers.[3]

Miranda wrote to the President, and sought to enlist his

[1] Wilkinson's Mem., i., 440.

[2] Hamilton, vii., 215; Van Buren: "Polit. Parties in U. S.," p. 86.

[3] Hamilton's "Repub.," vii., 220.

sympathy. He closed with the exclamation: "Would to God the United States would do for my countrymen of the South in 1798 what the king of France did for them in 1778!"

The President made no reply, and gave no countenance to the project. He had no sympathy with any policy which emanated from Hamilton. Adams' grandson, in editing his works, says: "The bare suggestion of an alliance with Great Britain contributed materially to modify the policy toward France."[1]

England would only help in the revolt in South America in case Spain was not able to save herself from a revolution, and keep France out of Portugal; and England so informed Spain. At the same time it prepared an expedition for the purpose of beginning the revolution in South America. Miranda was kept in suspense, awaiting the pleasure of the English Government in the involutions of its policy with Spain. At length, when hope in that quarter was gone, in 1804, he came to this country, having, however, an understanding with the British Government that but little force would need to be used, and that it would give real, if non-avowed, assistance.

Miranda called upon and was received cordially by the President and the Secretary of State. The difference with Spain on the subject of Louisiana had been settled. Hamilton had just died by the hand of Burr. There could no open aid be had from the United States for the expedition, but it evidently appeared afterward that the government was privy to the project, although it could not publicly countenance it.

The expedition sailed from New York in a single vessel on the second of February, 1806.[2] It consisted of nearly two hundred persons, a large proportion of whom were Americans, many of them of good standing, but most of them of crooked fortunes. They were made to believe that the government intended very soon explicitly to authorize

[1] J. Adams' Works, viii., 582.

[2] History of Miranda's Exp. to S. A. Bost., 1810, *passim*.

the use of force against Spain; that they were going to relieve the oppressed; and that an indefinite field of conquest, with no doubt as to the result, stretched out before them. The English vessels of war which they fell in with examined their papers, and evinced their good-will by letting them go on. They were allowed to recruit their numbers, and lay in supplies at Trinidad, where they stopped for a time. They landed at Coro, in Caraccas, on the third of August, where Miranda put out a proclamation, calling the people to his standard, and promising large concessions.

Affairs were badly managed; there was no local response; the Spaniards at length rallied their forces; a number of the expeditionary soldiers were taken prisoners and put to death; the remainder were driven off the coast, were scattered, and gradually found their way back to America. Thus ended in disaster an attempt which was keenly watched from a distance, and to which large help would have come, had it but been able to establish itself for a while. It had looked to the United States for help, as they were developing such large interests on the Gulf of Mexico. It failed, as being an effort from without, rather than an outgrowth from within.

Even while Miranda was concerting his plans in this country, Aaron Burr was restlessly moving through the West and East, stirring the embers of sedition, inflaming the wild hopes of adventurers, and using the fascination of his personal influence, to organize the plot which contemplated, in his excited brain, nothing less than an empire, to be made out of the disaffected districts in the southwestern portion of the United States and Mexico, which he proposed to invade and conquer; and with its capital at New Orleans. From March, 1805, when his incumbency of the Vice-Presidency ceased, to September, 1806, when he came to Blennerhassett Island, to undertake the material preparations for the expedition, Burr was intensely occupied, enlisting sympathy, securing means, enrolling adherents, and leaving the vague impression everywhere that very soon a movement would begin which would shake the government to its centre.

We know what a pitiful force he actually had as he came down the Mississippi River in January, 1807. And yet we know that approaches had been made to the diplomatic representatives in this country of Great Britain and Spain for aid, and that they had promised such aid to the project; that the President had thought the occasion serious enough to cause him to fulminate against the expedition a proclamation of warning addressed to the governors of the States; and that the general-in-chief of the army pretended to have serious alarms as to the extent and results of the uprising. The President, indeed, afterward wrote to Bowdoin, as showing how popular the expedition was: "We have only to lie still, and he would have had followers enough to have been in the city of Mexico in six weeks." [1]

To Burr came all the factious complaints made through the West of the real or imagined neglects which its interests were suffering from at the hands of the government in Washington. To him came assurances, never to be realized, of those who pledged to him their adhesion and aid. Into his web were woven an ill-assorted medley of hopes of plunder, anticipations of the acquisition of the fabulous wealth of the mines of Mexico, desire for place and distinction in the new empire, until to Burr it seemed a perfect and strong fabric. He left no records; his co-conspirators would not be likely to tell the story of the pledges broken, and the point at which the plot approached the success which finally eluded it.

He was arrested on the seventeenth of January, escaped, was recaptured, taken to Richmond, was tried and acquitted. It is a noteworthy coincidence that the two great antagonists, Hamilton and Burr, should both have had the purpose, although in a different form, to lead American forces into the Spanish-American country. It indicates, among other things, that this was the readiest field for warlike prowess.

The expedition of Miranda and the conspiracy of Burr found their life and encouragement in the restless spirit of adventure in the American people, in a sympathy for the oppressed nationalities in the regions beyond, specially felt

[1] Wirt, i., p. 151.

by those who had recently achieved their own political freedom, and, mingling with these motives, no doubt, a desire to find a more rapid road to wealth. These had been constant forces all the time pressing out the American frontier. But, before the actual extension of the boundary line, the on-pressing adventurer or colony takes over the line into the foreign country the American spirit, which constantly gains body, and leavens the communities, until there is a restlessness under the existing domination, a disposition to revolt, and then the shaping up of a slowly formed purpose to seek for annexation to the United States.

Thus it was with Texas. The boundary line had been clearly defined in 1819, two years before the independence of Mexico was conceded; but, before this, American adventurers had made settlements in this American colony, some of whom became the political leaders there. Discontent with the government caused revolts to such an extent that repeatedly, from March, 1825, to August, 1829, the United States sought to purchase a part or the whole of Texas. In 1827, Mr. Poinsett, the American Minister, was instructed to offer one million dollars for the territory to the Rio Grande, or half that amount for the portion east of the Colorado River. Mr. Clay, the Secretary of State, explained his reasons for this course, in the fact that grants of land of such great extent were being constantly and readily made by the Mexican government to American citizens, for very small amounts, presumably for settlement; that these citizens carried with them their principles of law, liberty, and religion; that, while they might be expected to conform to the customs of the country, it would be too much to expect that there would be no collisions; that already some had occurred; and that these would inevitably lead to misunderstandings between the two republics. He thought, therefore, it would be better for the United States to purchase the territory, and so remove the causes of disturbance.

By 1831, the American population in Texas had reached twenty thousand[1]; and although, by the general law of

[1] Yoakum's "Texas," i., 274.

April 6, 1830, immigration from the United States was prohibited, a constant stream of Americans came into the district. For years after, the whole history is that of strugglings to free themselves from Mexican rule. The country declared itself independent on the second of March, 1836. Its independence was acknowledged by the United States on the first of March of the following year. Thereafter, for eight years, it was a never-ending contest on the part of Mexico, by predatory warfare, to subdue the insurgents and establish its own rule; and, on the part of the inhabitants, to endure all things rather than come again under Mexican control. The formerly dominant Latin type of race had wholly changed, and been now supplanted by the Anglo-Saxon and the American. It was natural, therefore, that, in order to put an end to the wearing strife, the Texans should be inclined to place themselves under the protection of their powerful neighbor, and seek annexation to the United States.

This came without effort on the part of this country. It was the gravitation of the weaker towards the stronger, having like political convictions. It was a further step on the way in which the Louisiana purchase was a critical incident.

In 1843, Mexico threatened the United States that the annexation of Texas would be considered as a provocation to war. Annexation, however, took place in 1845, and was ratified in Congress by a very narrow vote, on account of the opposition of the North, which was occasioned by the dislike to the extension of territory in which slavery would prevail. A consideration which was urged with effect in favor of the annexation, was the assertion that France and Great Britain made no secret of their desire to see Texas under an English or a joint protectorate without slavery, and free from all control of the United States.[1]

Mexico declared war; the result of which, by the treaty of Guadalupe Hidalgo, February the second, 1848, was the large increase of the domain of the United States, which in-

[1] Yoakum's "Texas," ii., 421.

cluded the valuable mineral regions of California, Nevada, and Colorado. The acquisition of Louisiana, as contributing to the enormous increase of the material wealth of the United States, derived from the gold and silver products of these Western States, has had a very wide and decided influence upon the social life of this country. While the gold coinage of the country, from the foundation of the government to 1849, was only seventy-six million dollars, from the time of the acquisition of California until now it has been over thirteeen hundred and thirty-seven millions of dollars. And while the silver coinage of the country, from the beginning of our nation until 1852, was only seventy-nine million dollars, since the time of the development of Nevada the amount has been over three hundred and seventy-six millions of dollars. Any recoinage of money would be more than offset by the large sums exported from the country in bars. The total increase in the wealth of the country in silver and gold from the regions included in the Western acquisitions of the United States amounts to fifteen hundred millions of dollars.[1]

We are all of us conscious of the difference which this accession of wealth has made in the manner of living in this country. The era of large fortunes dates from the discovery of the California gold mines. Before that there were but few who possessed more than a handsome competence. Into the style of building, the modes of living, the methods of trade, the influence of this vast and sudden increase of wealth has entered. The purpose of this paper does not require that I should do more than indicate the direction, and the increasing significance of this influence, as resulting, in the last analysis, from the purchase of the Louisiana territory.

A further result, not of the least importance, as growing out of the acquisition of this territory, was the vast increase in the sweep and scope of the American policy, which the large increase of territory compelled. In the early days of the republic, it is impossible not to notice what a restricted

[1] Report Secretary of Treas. U. S., 1884, p. 241.

range of interests engaged the attention of Congress. In the treaty of 1782, while the freedom of navigation of the Mississippi River is yielded to Great Britain, and the whole subject of its possession by the United States occupies but a few lines, the fisheries are dealt with in minute particularity. The question of the peculiar protection to be extended to rice occupied the attention of the first Continental Congress for several days, and threatened the loss to the American cause of one of the revolting colonies.[1] But it was not strange that entirely new and vastly extended interests should appear, when the domain of the Union came to extend over the continent, and to abut on two oceans and the Gulf of Mexico. Great departments of the government were called out by the enlarged and complicated relations resulting from the treaty of purchase. New duties were created, not only with the other nations on this continent, but, on account of the isolation of the hemisphere, with both the continents, and with the European continent in its bearing towards the nations of the West. The earlier position of the United States was, while dignified, yet defensive. With national growth, came the recognition and assertion of the place which this country must hold before the world, both by reason of its geographical position, and also the peculiarity of its political principles. It is gratifying to our national pride now to recall that, even in the days of our greatest weakness, there seemed to be a prescience of our certain greatness in the future, and a fine audacity in asserting principles which could only secure their full interpretation afterward.

Washington, in 1796, had uttered his prophetic warning that, as Europe had a set of primary interests which have no, or a very remote, relation to us, we should engage in no entangling foreign alliances, nor should we forego the advantages of our own peculiar situation.

Jefferson wrote, on the fourth of August, 1820,[2] to William Short: "The principles of society in Europe and here are radically different, and I hope no American patriot will ever

[1] Bancroft's Hist., vii., 147. [2] Randolph: "Jefferson," iii., 472.

lose sight of the essential policy of interdicting in the seas and territory of both Americas the ferocious and sanguinary contests of Europe."

After the downfall of Napoleon the great powers of Europe combined, in what was called the Holy Alliance, to make head against revolutionary tendencies in Europe and the assertion of popular rights against autocracy. An insurrection broke out in Spain in the summer of 1821. This power had fallen from her old place in Europe, and her American colonies were slipping away from her. A Congress of the European powers met at Verona on the twenty-second of October of that year, to consider the insurrection, and if necessary to interpose and stamp out the revolt. England, represented by the Duke of Wellington, declined to interfere. It was determined that a French army, with the approval of the other powers, should occupy Spain, and suppress the insurrection.

At this Congress the subject of helping Spain to recover revolted provinces in America was discussed, and England expressed opposition to it. Besides the reasons for this attitude coming from her liberal constitution and spirit, commercial instincts had weight. England's trade with these colonies had become very great, and her commercial supremacy was unchallenged. She would view with jealousy any disposition in other powers to intervene, and thus cause a resumption of Spain's restrictive policy.

In August, 1823, Mr. Canning, the British Minister, proposed to Mr. Rush, our Envoy in London, that Great Britain and the United States should put out a joint declaration before Europe, in opposition to the designs of the Alliance with regard to the Western continents: that while the two governments did not design to interfere with or become possessed of any portion of the colonies, they would not regard with indifference the intervention of any third power. Mr. Rush replied that, while he had no instructions on the subject, he would accede on one condition, that England should recognize the independence of the revolted colonies, as the United States had done. Mr. Canning declined the

proposition, and in consequence no declaration was put out. Great Britain protested to France against any intervention on its part, in behalf of Spain, in the affairs of the colonies; and France declared that it had no intention to interfere in Spanish America.

About this time the United States and Russia[1] were at issue with regard to the boundary lines in the northwestern parts of America. Russia made claim to territory which was disputed by the United States. On the seventeenth of July, 1823, John Quincy Adams, the Secretary of State, declared to Baron Tuyl, the Russian Minister, that the United States were ready to assume distinctly the principle, that the American continents are no longer subjects for any new European colonial establishments.[2]

The President, Mr. Monroe, thought that the situation was so grave that he called upon the ex-Presidents, Jefferson and Madison, for their advice. Mr. Jefferson said: "Our first and fundamental maxim should be never to entangle ourselves in the broils of Europe. Our second, never to suffer Europe to intermeddle with cis-Atlantic affairs. America, North and South, has a set of interests distinct from those of Europe, and peculiarly her own." In this judgment Mr. Madison concurred.

The President, on the second of December, 1823, in his message to Congress, put forth the declaration which has since become so famous: "In the wars of the European powers, in matters relating to themselves, we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded, or seriously menaced, that we resent injury, or make preparation for our defence. With the movements on this hemisphere we are, of necessity more intimately connected. * * * We owe it, therefore, to candor, and to the amicable relations existing between the United States and the powers of Europe, to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies and de-

[1] Tucker: "Monroe Doct.," p. 13. [2] J. Q. Adams' Mem., vi., 163.

pendencies of any European power we have not interfered, and shall not interfere; but with the governments which have declared their independence, and maintained it, and whose independence we have acknowledged, we could not view any interference by a European power in any other light than as a manifestation of an unfriendly disposition towards the United States."

England did not concur in the reference to colonization; but her commercial situation was such that she strongly approved of the purpose expressed to resist the interference of Europe in South America. Mr. Everett says [1] that the doctrine was announced by President Monroe, "not merely with the approval of the British Minister of Foreign Affairs, but at his earnest and oft-repeated solicitations." In Parliament, strong praise was given [2] to a government, representing only ten millions of people, for bravely declaring in the face of Europe its purpose to espouse the cause of oppressed nationalities. The South-American colonists greatly rejoiced, and the value of their funds rapidly advanced.

It is to be noted with regard to this, so-called, "Monroe doctrine," that it is quite certain that it did not at all emanate from Mr. Monroe, but was suggested and urged upon the President by his Secretary, Mr. Adams. The principle was communicated to Baron Tuyl, six months before it found expression in the President's message. His biographer says that he finds no trace of the doctrine in any other portion of Mr. Monroe's writings. A recently-published letter of Mr. Plumer [3] indicates that the President, after he had written, but before he had delivered his message to Congress, expressed to Mr. Adams his doubts as to the wisdom of the part which referred to non-interference, but that Mr. Adams pressed it, and Mr. Monroe remarked that, as it was written, so it should remain. Mr. Calhoun, in April, 1848,[4] in a speech in the Senate, said that that portion of the message originated with Mr. Adams, and never became a subject of

[1] *N. Y. Ledger*, Oct. 3, 1862. [2] Niles' Reg., vol. ix., pp. 633, 822.
[3] Mag. Penn. Hist., vi., 358.
[4] *Cong. Globe*, xviii., p. 712; 30th Cong., 1st Sess.

deliberation in Mr. Monroe's cabinet. He declared that he stated this as a duty to the cabinet, of which he was a member, and at this time the only survivor. He was himself opposed to the doctrine, as was also Mr. Randolph.

It is also interesting to observe that, although the enunciation of the principle created profound impression at the time in this country and Europe, and has been constantly quoted by our ministers and statesmen since, as a part of the unwritten law of the republic, yet the doctrine has never received legislative sanction. Within two months after President Monroe's declaration, on the twentieth of January, 1824,[1] Mr. Clay, and afterwards Mr. Poinsett, introduced resolutions into the House of Representatives, that the people of the United States would not view without serious inquietude any foreign intervention of the allied powers of Europe, to reduce to their former subjection those parts of the continent of America which have established for themselves independent governments, and which governments have been solemnly recognized by the United States. The resolution was laid upon the table for future consideration, while the House was in Committee of the Whole on what was just then a burning question, the expression of sympathy in the Greek Revolution, and it never was taken up.

The special application of the doctrine, and the resolution of Mr. Clay, to South America absorbed attention at the time, rather than the larger principle, which interests us in this day. This fact evidently affected contemporary criticism of the declaration. The London papers, because Great Britain was commercially interested in non-intervention in South America, all applauded the announcement; and *Bell's Weekly Messenger* said: "This settles the most important of all pending political questions." The French press, on the other hand, denounced it. *L'Etoile*, of Paris, the ministerial organ, said: "Mr. Monroe is the temporary president of a republic situated on the eastern portion of North America. This republic is bounded on the south by the possessions of the King of Spain, and on the north by those of the King of

[1] Abrdgmt. Deb. Cong., vii., 650; Niles' Reg., vol. xxv., 335.

England. Its independence has only been acknowledged for forty years. By what title then are the two Americas to be under his immediate dependence from Hudson's Bay to Cape Horn? It is satisfactory to consider that the message has not yet received the sanction of any of the authorities of the country, and that the opinions of Mr. Monroe are as yet merely the opinions of a private individual." To this the *London Times*, of the sixteenth of January, rejoins: "The editor calls Mr. Monroe a 'temporary president,' but is the power which he exerts a temporary power? It is, on the contrary, a prerogative that never dies, let who will be its trustee for the moment; and which, as Mr. Monroe has, on this occasion, employed it, has its sanction in the heart of every citizen among the millions who confided it to his hands. Will *L' Etoile* venture to match the duration of any despotic throne in Europe with that of the President's chair in North America? Or, will his patron risk the fate of an expedition on the chance of the policy announced by this 'private individual,' Mr. Monroe, being disclaimed by the other authorities of the republic?"[1]

Mr. Webster, in April, 1826, declared concerning the pronouncement: "I look upon the message of December, 1823, as forming a bright page in our history. It did honor to the sagacity of the Government, and I will not dim that honor. It elevated the hopes and gratified the patriotism of the people."[2] Successive administrations have used the declaration in communications to foreign governments, as though its principle was not debatable, and have asserted that the doctrine is imbedded in the policy of this country.

In 1852, in the application of this doctrine, the United States refused to enter into a tripartite treaty, sought by Great Britain and France, to renounce forever all claims to the island of Cuba. This government declared that, while it had no present purpose of interference, the situation of the several governments was not identical, and we could not bind ourselves under all possible eventualities.

In 1861, when Napoleon was seeking to establish an em-

[1] Niles' Reg., xxv., 412. [2] Works, iii., 205.

pire in Mexico, this government demanded of France a declaration of its purpose in intervening in the affairs of that nation, and it secured a pledge that France only sought an adjustment of the pecuniary claims of its subjects. Napoleon, however, declared his true purpose in a letter addressed to General Forey, on the landing of the troops at Vera Cruz: "It is our interest that the United States shall be powerful and prosperous; but it is not at all to our interest that she should grasp the whole Gulf of Mexico, rule thence the Antilles, as well as South America, and be the sole dispenser of the products of the northwest. If, on the contrary, Mexico preserves its independence, and maintains the integrity of its territory, if a stable government be there established, with the aid of France, we shall have restored to the Latin race on the other side of the ocean its force and prestige."

Napoleon ventured on the disability of the United States at the time, occasioned by the civil war. The House of Representatives, on the fourth of April, 1864, passed a resolution asserting that they thought it fit to declare that it did not accord with the sentiments of the people of the United States to acknowledge a monarchical government erected on the ruins of any republican governments in America, under the auspices of any European power. The United States did not at any stage recognize the usurping intrusion, and the whole fabric crumbled to pieces when the French force was withdrawn on the vigorous protest of this government, and the restoration of its strength by the close of the civil contest.

The most significant application of the Monroe doctrine has been in connection with the question of the Isthmus Canal. On the twelfth of December, 1846, a treaty was negotiated between the United States and New Grenada, now Colombia,[1] in which New Grenada guaranteed the right of way or transit across the Isthmus of Panama upon any modes of construction that then existed, or that might thereafter be constructed; and the United States, on their part, guaran-

[1] Treaties U. S., p. 187.

teed the perfect neutrality of the isthmus, and the rights of sovereignty of New Grenada over the territory of the same.

In 1849,[1] Mr. Hise, our representative in Guatemala, signed a treaty with the republic of Nicaragua, without instructions, however, from the United States Government, by the terms of which Nicaragua granted to the United States the exclusive right of way across her territory for the construction of a ship-canal, and the United States, on their part, guaranteed to Nicaragua the protection of her territory, and assured her of support in any war for its defence.

Great Britain asserted an early protectorate over the Musquito Indians, a petty, mongrel race in Central America, and on this was based a claim on her part to a portion of Honduras. Some differences arose between the Musquito Indians and the republic of Nicaragua, and on the ninth of January, 1848, the Nicaraguans raised their flag at Greytown, the necessary terminus of any canal or railway across the isthmus, within the territory of Nicaragua. But a few weeks after, on the second of February, the treaty of Guadalupe Hidalgo was signed, by which the United States obtained a great accession of territory, and a corresponding increase of influence in Southwestern North America. Apparently as an offset to this, and to restrain the growing influence of the United States, immediately after, Great Britain took the part of the Indians, and forced Nicaragua to terms. A few months after, Great Britain took forcible possession of the islands in the Bay of Fonseca, on the Pacific side, ostensibly to enforce her claims of indemnity for British subjects against the States of Honduras and San Salvador; but, in reality, to maintain British influence in territory which had prospectively such great international importance.

As it was foreseen that such clashing interests would be likely to involve the larger powers, Mr. Clayton, the Secretary of State at Washington, and Mr. Bulwer, the British Minister, on the nineteenth of April, 1850, signed a treaty,[2] the purpose of which was to fix the views of the two powers

[1] Treaties U. S., p. 436. [2] Treaties U. S., p. 377.

with reference to any means of communication by ship-canal which might be constructed in Nicaragua between the Atlantic and Pacific oceans. By this it was provided that neither government should ever obtain, or maintain for itself, any exclusive control over the said ship-canal; nor erect or maintain any fortifications, or colonize, or exercise any domination over Nicaragua, or any part of Central America; nor make any use of any protectorate or alliance for the purpose of acquiring for the citizens of the one power any rights of commerce which should not be offered on the same terms to the citizens of the other. The canal was to be neutral; the cities at its termini were to be free; and, in case of war, exemption from attack for a certain distance was to be guaranteed.

The position in which this treaty placed the United States was one not in harmony with the Monroe doctrine, and also, while leaving the guaranties of the United States to Grenada and Nicaragua for the maintenance of their territory and defence of their rights uncancelled, it barred this government from the advantages which those guaranties were designed to confer.

Mr. Clayton, on the ninth of March, 1856, in the Senate,[1] acknowledged that in this treaty he intended to disregard the Monroe doctrine. In the efforts to harmonize the divergent interpretations of this treaty, and either to abrogate it or modify its provisions; to all of which, of course, Great Britain interposes vigorous objections, there has been a long correspondence. Great Britain has adhered very firmly to her views, and a misunderstanding exists, which is quiescent, so long as there is no canal existing; but which may at any time become acute, and which must at some day be settled.

President Adams, on the third of March, 1829,[2] in sending to the Senate a copy of Mr. Clay's instructions on non-intervention to the deputies of this government to the Panama Congress, said, "The purposes for which the instructions were intended are still of the deepest interest to our country and to the world"; and then he significantly added: "They

[1] *Cong. Globe*, xxvii, 251. [2] J. Q. Adams' Mem., viii. p. 95, etc.

may hereafter call for the active energies of the Government of the United States." The simple utterance made by President Monroe, over sixty years ago, when this country had not one-sixth of its present population, and which only marked the forward stride of policy compelled by the acquisition of Louisiana,—this utterance has a vast amount of caloric in it, and in its practical application to emergencies at any time likely to arise, may require, if the principle is to be maintained, as no doubt it will be maintained, as Mr. Adams foresaw, "the active energies of the Government of the United States."

I do not think that I have overstated the consequence which, in the development of this country, the purchase of the Louisiana territory has had. Nor do I think that I have gone too far afield, and connected influences and results with this critical event in the history of this country, which do not directly and properly belong to it. Indeed, my impression is that there are still other consequences which have resulted, and are emerging, as made possible by this acquisition of territory; but to which I have not the opportunity now to advert. It would be interesting to observe the influence upon legislation and practice in certain portions of this country of the Latin law, as checking and affecting the use of the common law of England, and which came to prevail in Louisiana under the extended domination of the French. Scarcely less suggestive would be a study of the mode of dividing the lands in severalty in the communities, without fields in common, which had its origin in the customs which the French brought with them to Louisiana. It is a feature which comes out prominently in early land litigation, and has interesting associations in connection with early Saxon use.

The noble river, which, with its confluents, is the crowning feature of, and gives the distinguishing value to, this purchase, drains half the continent. The Father of Waters, as Mr. Lincoln said, goes unvexed to the sea. With its head among the northern lakes, and its outlet in the tepid waters of the Gulf of Mexico, it binds together the interests of the

varied latitudes through which it passes. In its majestic movement, and its constantly increasing extent and sweep, it fitly symbolizes the history and future of the American Republic. This steadily and quietly moves on, drawing to itself without effort, and then carrying easily in its bosom, the elements which had their rise in widely-separated regions, until they merge themselves in the benignant depths and width of God's great purposes in forming and maintaining the nations of the earth.

In all this destiny and work the acquisition of this vast and fertile territory, with what has issued from it, plays a masterful part.

HISTORY

OF

THE APPOINTING POWER

OF THE

PRESIDENT

"The President . . . shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments.

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session."

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HISTORY

OF

THE APPOINTING POWER

OF THE

PRESIDENT

BY

LUCY M. SALMON

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HISTORY

OF THE

APPOINTING POWER OF THE PRESIDENT.

I.

ESTABLISHMENT OF THE APPOINTING POWER.

THE framers of the Constitution were apparently led by three considerations to give the appointing power the form it ultimately took in the Philadelphia Convention: first, by their observation of the English method; second, by their own experience under the Articles of Confederation; third, by the plans in operation in the individual States.

In England, the Prime-Minister, by gifts of office, as well as of money, had made himself virtually irresponsible, and had reduced the practice of corruption to a science. Even among the extremists, none were found who openly advocated placing the power in the hands of the Executive alone.

Under the Articles of Confederation all appointments had of necessity been made by the general Congress.[1]

The majority were convinced that it was equally unwise to place unlimited control in such a body. The cry of corruption had already been raised, and not altogether without excuse.[2] Yet no one wished to take from the Legislature all voice in the matter.

In the various States, there had been no uniform practice. In the majority, however, appointments had been made by

[1] "The United States in Congress assembled shall have authority to appoint . . . such. . . civil officers as may be necessary for managing the general affairs of the United States under their direction."—Art. of Con., art. ix.

[2] Curtis, vol. ii., p. 248.

both Houses of the Legislature, or by the Governor with the consent of the Legislature, or his advising council.[1] In none had the method employed seemed perfect, and in some the complaints were loud.[2]

The question before the convention was, how to embody all the excellencies and avoid all the evils of the different systems with which they were familiar.[3] Three plans were submitted for the consideration of the convention, and a fourth, while not formally presented, undoubtedly had great influence.

The Virginia resolutions,[4] drawn up by Mr. Randolph, provided that the Executive and the Judiciary should be chosen by the National Legislature, but a check was placed on its power by making the members of both branches ineligible to any office during their time of service or for a term of years after its expiration.[5] No special provision was made for the appointment of officers, but the President was "to enjoy the executive rights vested in Congress by the Confederation." This might include the power of appointment, but as the Executive was to be chosen by both Houses of the Legislature, the control would in a measure ultimately rest with them.

The New Jersey plan,[6] offered by Mr. Patterson, differed somewhat from that of Virginia. The executive office was

[1] Compare the constitutions of the States in 1789. Poore's "Charters and Constitutions."

[2] Mr. Williamson, of N. C., said he had scarcely seen a single corrupt measure in the Legislature which could not be traced to office-hunting. Elliot, v., p. 423. Mr. Mason and Mr. Madison said substantially the same thing in regard to Virginia. Elliot, v., 230, 232. Mr. Hamilton, after observing for ten years the working of the N. Y. Constitution, felt that the system was far from perfect.—*The Federalist*, No. 77.

[3] How difficult the task was considered at the time, we may judge from a letter of Mr. Madison, written April 16, 1787. He expresses his views very fully on all other points of the proposed Constitution, but says of the Executive, "I have scarcely ventured to form my own opinion yet . . . of authorities with which it ought to be clothed."—Madison, Works, i., 287–292.

[4] Elliot, v., pp. 127, 128.

[5] This limitation was doubtless owing to the "shameful partiality of the Legislature of Virginia to its own members." Elliot, v., p. 230.

[6] Elliot, v., pp. 191, 192.

to be held by two or more persons who were given power to appoint all federal officers, including the Judiciary; but as they were themselves to be elected by Congress, that body would have great influence over appointments, and as its members were not to be ineligible to office, the plan was open to grave objections.

Mr. Charles Pinckney's plan[1] more nearly resembled the present system. The executive power was to be vested in a single person, who was to commission all officers of the United States, and, except ambassadors, other ministers, and judges of the Supreme Court, to nominate and, with the consent of the Senate, appoint all officers of the general government. The Senate was to have exclusive power to appoint those officers of whom exception was made, but its members were to be ineligible to office during their term of service and for one year afterward. Members of the Lower House were also not to receive office while sitting in Congress.

Mr. Hamilton's plan,[2] which was intentionally theoretical rather than practical, gave to the Executive, elected by electors, the sole appointment of the heads of the departments of finance, war, and foreign affairs, and the nomination of all other officers, including ambassadors, subject to the approbation or disapproval of the Senate.

The essential differences of these projects, as they were considered by the convention, may be summed up in the questions, Shall the appointing power be given exclusively to one or both Houses of Congress, or shall it be given to the Executive subject to legislative control? In either case, shall the appointing power be limited in its choice to those who are not members of Congress?

The timid ones, who were still haunted by the fear of "monarchy," favored placing the chief power in Congress, but making its members ineligible to office, thus avoiding, as they thought, too great power in the hands of one man, and removing a means of temptation from a numerous body. But the more resolute, far-sighted members knew that if the Executive was to be an executive in more than name, he

[1] Elliot, v., pp. 129–132. [2] Elliot, v., p. 205.

must be given adequate powers, unhampered by needless restrictions; that if he was to carry out the will of the people and be responsible to them, he must be given the choice of his servants; that corruption among many was more to be feared than abuse of power on the part of one; but that as it is sometimes necessary "to supply the want of wisdom or virtue in one department by the wisdom or virtue of another," he should be provided with a definite, constitutional means of seeking advice. In the end these views prevailed, though not without a long and bitter contest, while the question of eligibility of members was settled by one of the minor compromises of the Constitution. In order to understand the full meaning of these results, it is necessary to notice the successive steps by which they were reached.

July 26th, two months after the convention assembled, a series of resolutions [1] was referred to the Committee of Detail, with instructions to report a constitution in conformity with them. As expressed in these resolutions, it was the opinion of the majority that the Executive should be chosen by the Legislature and given the power of appointment, except in the case of judges of the Supreme Court. These were to be elected by the Upper House of Congress, who were to be ineligible to office during their term of service and one year thereafter, while members of the Lower House were also to be ineligible during their term of service. This indirectly gave more control over appointments to the Legislature than to the Executive. The draft submitted by the committee, August 6th,[2] included these recommendations, varying only by giving to the Senate the additional power of appointing ambassadors. But these provisions were far from satisfactory, and no decision could be reached. With the exception of the eligibility of members, the entire question was again referred to the Committee of Eleven, and on September 4th they presented their report.[3] It differed greatly from the resolutions of July 26th and the draft of August 6th, in giving more power to the Executive. The

[1] Elliot, v., pp. 375, 376. [2] Elliot, v., pp. 376–381.
[3] Elliot, i., p. 283; v., 507.

control of all appointments was given him, but abuse of that power was prevented by giving the Senate a veto on injudicious nominations. In a word, instead of dividing the appointing power between the Executive and the Senate, and allowing each to be independent of the other, it was united in one, but a negative given to the other. After a few minor changes in detail, this is the report adopted September 17th.[1]

The ineligibility of members of Congress to any other office had been insisted upon, for reasons already mentioned, from the very beginning.[2] The Virginia plan and that of Mr. Pinckney had placed great emphasis on this point. The abuse of the privilege in Great Britain, under the Confedera-

[1] That even this plan did not meet the views of all, is evident from the correspondence that took place between John Adams and Roger Sherman. Mr. Adams favored giving the President the entire power, and depriving the Senate of all voice in the matter. The discussion is interesting as showing that, however groundless most of his fears have since proved, he appreciated in a measure some of the dangers that have arisen on account of giving this power to the Senate. His objections to a negative by the Senate are in substance as follows:

1. It lessens the responsibility of the President. 2. The time of the Senate is taken from legislative and given to executive matters. 3. The people ought to be free to watch the Executive, and not divide their time between him and the Senate. 4. It has a tendency to excite ambition in the Senate. Every member will be tempted to use his influence to secure appointments for those who will elect his friends and defeat his enemies, thus introducing corruption. 5. It will involve the Senate in censure and suspicion, without doing any good. 6. As soon as parties arise, these parties in the Senate will give rise to divisions on every nomination. 7. The whole business of the government will be delayed on account of the disproportionate demands upon the time of the Senate. 8. It will weaken the hands of the Executive by lessening the obligation and gratitude of the candidate to the President, and dividing it between him and the Senate.

Mr. Sherman's reply is briefly: 1. Without this power of the Senate, the President is a despot. 2. The Executive is to carry out the will of the Legislature declared by the laws. The Senate will accomplish that end by advising appointments that will be most likely to effect it. 3. The Senate will be watchful of any infringement of the rights of the States. 4. The Senate will be superior to faction, intrigue, or artifice in securing appointments. They can not hold office themselves, and will be diffident about suggesting friends, lest they be accused of partiality.

The correspondence is given in full in Pitkin, vol. ii., pp. 285–291.

[2] Massachusetts, in her first instructions to her delegates, had forbidden them to accept any modification of the Articles of Confederation which did not include this provision.—Curtis, ii., p. 249.

tion, and in many of the States, could not reconcile the convention to the theoretical advantages of the opposite course. Mr. Madison and his associates failed to convince the majority that the appointing power must have freedom of choice, and that restriction was degrading both to the Executive and to Congress.[1] As late as the draft of August 6th this condition was insisted upon. It was not until September 3d[2] that a compromise was effected between those who demanded entire exclusion of members from office and those who claimed for the Executive the privilege of selection. By this compromise members of Congress were excluded from any office created during their time of service, and from holding any other position while in Congress.[3] This restriction was of great importance at that time, when a large proportion of the offices were of necessity new ones; but it has long since ceased to be any check upon either Executive or Congress.

We are thus able to trace from the very beginning the development of the idea that the appointing power must be given to the Executive rather than to Congress, even though restrictions be placed upon the latter. Such a result could not have been attained when the convention met; after long and frequent debates for three months and a half, it was one of the last measures decided upon before the assembly dissolved. It was a concession on the part of the States, and a concession in favor of theory rather than an acknowledgment that their individual systems had in the main been at fault. But though the delegates had assented to these terms, the States themselves were not all convinced of their wisdom. Among the first amendments suggested by Virginia before ratifying the Constitution was one disqualifying members of Congress from holding federal office during the period for which they were chosen,[4] and North Carolina proposed a similar one.[5] While in no sense affecting the end gained, these propositions well illustrate the sentiment of the people on that point.

[1] Elliot, v., pp. 420, 504, 505.
[2] Elliot, i., p. 282.
[3] Constitution, art. i., sec. 6, par. 2.
[4] Elliot, iii., p. 659.
[5] Elliot, iv., 245.

II.

THE INTERPRETATION OF CONGRESS IN 1789.

THE Constitution was adopted, but however explicitly its framers may have supposed that they had settled all its provisions in regard to the appointing power, there were many incidental questions connected with it still open for discussion. The most important of these that have been made the subject of legislative and judicial interpretation are the following:

1. Does the appointing power include the removing power?

2. If so, does the removing power belong to the President, or to the President and Senate?

3. If it belongs to the President, can Congress give any duration of office not subject to the power of removal?

4. Can the Executive create an office by appointing the officer?

5. Who are "inferior officers"?

6. What construction shall be put upon the power of the President to fill vacancies that may happen during the recess of the Senate?

7. When is the appointment of an officer to be deemed complete?

8. When Congress delegates the appointment of "inferior officers," can it prescribe the term of office and manner in which, and by whom, removals shall be made?

9. When the tenure of office is not provided for by the Constitution, is it to be held at pleasure or during good behavior?

The questions in regard to removals were among the first to be discussed during the first session of Congress in 1789,

in connection with the establishment of the executive departments.[1] It seems best to consider in detail the various steps taken and the arguments advanced, first, for the reason stated by an eminent English jurist, "great regard ought, in construing a law, to be paid to the construction which the sages, who lived about the time or soon after it was made, put upon it, because they were best able to judge of the intention of the makers at the time when the law was made (*contemporania expositio est fortissima in legem*"); and secondly, because the construction then put upon the Constitution remained in force for seventy-five years; third, because it is the arsenal from which is derived all the ammunition used in every succeeding debate on the subject; fourth, because it shows how largely the element of speculation entered into all the discussions, and that while difficult to refute many of the theories advanced, the experience of the country has, in many respects, modified them.[2]

The history of the measures introduced, and of the arguments presented, is as follows:

On the 19th of May, 1789, Mr. Madison introduced into the House a resolution looking to the establishment of a Department of Foreign Affairs, at the head of which should be an officer "appointed by the President by and with the advice and consent of the Senate, and to be removable by the President." The objection was raised that the words "who shall be appointed by the President by and with the advice and consent of the Senate" were superfluous, as such power was expressly given by the Constitution. As all conceded this, the debate took place on the clause, "to be removable by the President." While before the Committee of the Whole an amendment was proposed, adding the words, "by and with the advice and consent of the Senate," but it was lost and the question carried, by a considerable majority, in favor of declaring the power of removal to be in the President.[3] May 22d, the House appointed a committee

[1] Annals of Congress, 1st Cong., 1st session, pp. 368, 456–585, 592–613

[2] Story, ii., p. 342. Note by Judge Cooley.

[3] Annals, 1st Cong., 1st sess., pp. 368–383.

of eleven[1] to prepare a bill in accordance with the resolution passed, and on June 16th the bill thus prepared came up for discussion in Committee of the Whole. The debate occupied four entire days, and on the 19th a motion to strike out the clause "to be removable by the President" was lost by a vote of twenty to thirty-four. June 22d, the bill was taken up by the House, when Mr. Benson proposed an amendment which would *imply* that the power of removal was in the President,[2] stating that, if carried, he would move to strike out the words "to be removable by the President." The amendment was offered on the ground that the bill, as it stood, gave the President a power which was vested in him by the Constitution, and that the House should not seem to grant a privilege which the same authority might at any time withdraw. It was supported by Mr. Madison and those who favored removal by the President, as it would be a concession to those who thought the question could not be made the subject of legislative discretion, and yet would express the sentiment of the House. The amendment giving implied power of removal to the President was carried by a vote of thirty to eighteen, and the clause expressly granting him that power was struck out by a vote of thirty-one to nineteen. The engrossed bill passed June 24th, twenty-nine in favor, twenty-two against.[3] The bill came up in the Senate July 14th, and was carried four days later by the casting vote of the Vice-President, Mr. Adams.[4]

In the debates in the House[5] the members were all agreed,

[1] Three of the eleven had been delegates at the Philadelphia Convention.

[2] The amendment was that "whenever said principal officer shall be removed by the President of the U. S., etc.," the chief clerk shall perform the duties of the office.

[3] Of the twenty-nine in favor, five had been members of the Philadelphia Convention, and a sixth, whose name does not appear on account of absence, was also in favor. The name of only one person appears on the negative who was in the convention.

[4] The reasons which led Mr. Adams to decide the question thus may be inferred from his correspondence with Mr. Sherman, p. 13, note; also from a letter to Mr. Jefferson from London, Dec. 6, 1787, in which he says: "Not a vote or voice would I have given to the Senate or any Senator." Works of J. Adams, viii., p. 464. He expresses the same idea, Works, vi., pp. 184, 185, 534, 539.

[5] For a partial sketch of the debate in the Senate see Maclay, pp. 104–114.

first, in the belief that the power of removal existed somewhere; and, second, in the desire to determine from the Constitution alone where it resided. All parties, however, discussed the question from the point of expediency, as well as of constitutionality. Four interpretations of the Constitution were given: first, that the power of removal was to be exercised by the President alone; second, that it was to be exercised by him only with the advice and consent of the Senate; third, that officers could be removed only by impeachment; fourth, that the Constitution had left the question to be regulated by Congress.

The first interpretation was the one held by Mr. Madison and the majority of the House. They based their arguments on the ground of constitutionality on these propositions: All offices not held expressly during good behavior, are by implication held at pleasure, and at the pleasure of the appointing power. The executive authority, which is vested in the President alone, must include both that of appointing and of removing. As the President is to see that the laws are faithfully executed, he must have means of displacing unfaithful servants; otherwise he is himself subject to impeachment, and the Constitution can not intend to tie his hands by giving him no prevention. Under all circumstances, except impeachment, the power which appoints must also remove, and by the direct words of the article, the President is to nominate and appoint all officers, the Senate having no voice in nominating, and merely a negative on appointments, "without ability to offer original propositions." While the power of impeachment is a supplemental security, this can not be the only way of removal, as it would prove insufficient. It could not have been intended to give the Senate a share in removals, inasmuch as they are to be the judges in impeachment, and could not be impartial ones if they had already passed an opinion on an officer. The prevailing idea of the Constitution is to separate entirely the legislative, executive, and judicial departments; this plan is frustrated if the Senate is to have a share in removals. It virtually places the Senate above the President,

by making it the judge, in case of removal, between the President on one side and the officer on the other. The President will never remove a worthy officer, as such an act would subject him to impeachment and removal.[1]

The principal reasons in favor of this interpretation drawn from expediency were, that by including the Senate in the decision concerning removals, it lessened the responsibility of the President, while the spirit of the Constitution demands the highest degree of responsibility in all executive officers. The President should be accountable at all times for the conduct of his subordinates; the only bond between them is his confidence in their integrity and talents, and when this confidence ceases, he alone should terminate the connection. If he suffered any one of them unpunished to trespass against the government, or if he neglected to superintend their conduct, he would himself be liable to removal. Take away this power of removal from the President, and it makes him a mere figure-head. Give it to the Senate, and faction, intrigue, and party spirit will foster a corruption that will prove fatal; the government becomes an aristocracy like that of Poland, infinitely more dangerous to the liberties of the people than a simple despotism could ever be. If the Senate is to share in this power, it must be kept in constant session, which will be a severe drain upon the treasury. But even thus a large share of its time must be given to executive work, to the neglect of its own proper legislative duties. Even if the President has control over the officers of the treasury, it gives him no control over the moneys of the treasury, as nothing can be taken from it without special appropriation. Impeachment alone would not be an adequate means of removal, as many become incapacitated for their duties without being subject to trial by the law.[2] "The danger to liberty has not yet

[1] This argument, presented by Mr. Madison, has apparently been more frequently quoted than any other opinion he ever expressed. His words were: "I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust."—Annals, 1st Cong., 1st sess., p. 498.

[2] The principal argument against the impeachment theory was drawn by this side from the length of the trial of Warren Hastings, then in progress.

been found to lie so much in the facility of introducing improper persons into office, as in the difficulty of displacing those who are unworthy of public trust." [1] In the President alone lies the only simple and sure means of removal. No unworthy man will ever be chosen to this high office, and the power may safely be entrusted to him, with the checks which the Constitution places upon its abuse.

The party which favored the union of the President and the Senate in the removing power, was led by Mr. White, supported by a considerable minority. They denied *in toto* that the power either of appointing or of removing was an executive one.[2] A chief magistrate is a necessary evil whose powers have been limited by the Constitution. The power of removal is included in that of appointment, but both are vested in the Senate and President. In the same section of the Constitution, the clause immediately preceding gives the treaty-making power to the President, but the consent of two thirds of the Senate is necessary for its completion. The juxtaposition of the appointing power can only mean that the Senate is to have an equal part with the President in making appointments as well as treaties.[3] The Constitution expressly states that the President shall appoint only with the consent of the Senate; he can therefore remove only on the same condition. The influence of the Senate becomes nugatory if deprived of its ability to displace. In extreme cases the President can temporarily suspend as well as appoint. Since the same qualities of mind are necessary to remove as to appoint, the intention must have been to give a share in both to the Senate.[4] The President can

[1] Madison, Debates, 1st sess., 1st Cong., p. 498.

[2] They failed to show that it was either a legislative or a judicial power. Mr. Gerry dwelt specially on this point, basing his assumption on the practice of the individual States, where appointments and removals were not considered executive functions. If the States had given no such power to the governors, the Constitution could not give it to the President.

[3] Gen. Logan made important use of this argument in the impeachment trial. —*Globe*, 40, 2d sess.

[4] Mr. Stone brings up this argument, and insists that a number of men are not more likely to do wrong than one man.

not be impeached for removing a worthy officer if the Legislature has placed the act at his discretion.

More especially it was maintained on the side of expediency that the direct, unavoidable effect would be, if the Senate were not included, to make the President a despot,[1] the danger lying specially in the control it would give him over the public treasury. He could never be impeached if the way was open for him to apply all the sources of the revenue to cover up his crimes. All offices should be filled by persons of integrity and ability, but such men will not leave their private business to accept office if they are subject to removal at the caprice of the Executive. Every man should have a fair trial, but this can never be secured if the President is to displace at pleasure. The responsibility of the President is lessened by giving him so much authority, as he can prevent his own impeachment by making his accusers and judges dependent officers. The Senate is more responsible than the President can be, as they must keep a

[1] Mr. Page, of Virginia, saw in the clause under discussion "the seeds of royal prerogative," and warned the House that the energy desired by the other party "has led many patriots to the bastile, to the halter, and to the block." Mr. Jackson already saw the President transformed into a monarch, and exclaims: "Behold the baleful influence of royal prerogative, when officers hold their commissions during the pleasure of the crown!" Mr. Scott, of Penn., did good service for the opposite side by the effectual use of a little ridicule. He says: "The arguments . . . consist in this: the raising of a great number of frightful pictures which at first sight appear very terrible; but when they are attentively contemplated, they appear to be the vagaries of a distorted imagination. The most frightful of all that has been brought into view is that the Treasurer must be the mere creature of the President, and conform to all his directions, or he arbitrarily removes him from office and lays violent hands on the money-chest. Then having the sword and the purse, you see the President boldly advancing, supported by the army and navy, and the money-chest in the background, engaging the liberties of the people. Armed with all the omnipotence of power, the protector rushes onward with irresistible impetuosity. So sudden and fatal is the stroke, that the expiring genius of America has hardly time to say, Farewell, Liberty! Thus despotism rides triumphant, and freedom and happiness are trampled in the dust."

The picture he draws scarcely exaggerates, either in style or matter, that presented by the anti-monarchists. All history, sacred and profane, ancient, mediæval, and modern, was called into requisition to furnish examples of the evil results which would follow from giving the President this power.

journal of all proceedings, and the State Legislatures will keep a strict watch over them, while the electors of the President are disbanded and they are not responsible for his misconduct. The Senate can be reached by those electing them, the President can not.

The impeachment theory was sustained by Mr. Smith, of South Carolina, with a doubtful following of one or two others. But it is unnecessary to give his arguments in detail, as they have never been of weight in subsequent discussions. The same is also to be said of the fourth interpretation.

At the close of the debate, four important conclusions had been reached:

1.—That the appointing power includes the removing power.

2.—That both belong to the President, the Senate having simply a negative on appointments.

3.—Where the tenure of office has not been provided for by the Constitution, the office is held at the pleasure of the appointing power.

4.—Heads of departments are not "inferior officers."

The significance of this result is plain. It indicates a still higher development of the idea that the Executive must be in reality as well as in name the head of the nation, though at all times responsible to it.

When the convention met in 1787, the Executive was considered a necessity, to be hedged in in every possible way lest he should abuse the little power granted him. A long stride in advance of this idea was taken before the convention closed, but the result was only partially secured. If the leaders had hoped ultimately to gain more than this, they did not venture to express such a desire. The people must be educated up to the standard already gained before a higher one could be set up. *The Federalist*[1] had sought to quiet the fears of those who thought that the Constitution gave the President too much control over appointments, by saying that "no one could fail to perceive the entire safety of the power of removal if it must thus be exercised in con-

[1] No. 77, April 4, 1788.

junction with the Senate." This interpretation was accepted, but Congress, in 1789, went still farther, and by construing the Constitution so as to give the President the power to remove his officers at pleasure, acknowledged an authority in him not thought of by the masses of the people in May, 1787, and doubtless believed impossible to secure in May, 1789. No more important illustration can be found of the growth of the national over the confederate idea than is seen in the progress made concerning the appointing power from May, 1787, to July, 1789.[1]

[1] The charge was made during the debate, and has been repeatedly made since, that the result was brought about only by the high character of the President then in office. It may be in a measure true, but it only serves to suggest another phase of the subject. Mr. Madison was not the only one who could not imagine an unworthy man in the Presidential chair. Hamilton had written in *The Federalist*, No. 76, that a President would be "ashamed and afraid to bring forward for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure." It may have been "excessive admiration of themselves," which led them to believe that the people would never elect to the office of President a person of less exalted character, yet certainly the position was for many years thus filled. It is important to notice how little difficulty attended the matter of appointments when the Constitution was formed and Congress met. It was said by Mr. Ames that it would be well if the President could personally perform all executive duties; and it was held throughout the debate that since he could not do this, it must be his duty constantly to watch the work delegated by him to his subordinates. As an illustration of the comparative ease with which this could at that time be done, and of the large increase in the number of civil officers which the rapid growth of the country soon demanded, we have taken, as a single example, the state of the post-office department from 1789–1817,

The number of officers was:

1789	75	1799	677	1809 . . .	2,012
1790	75	1800	903	1810 . . .	2,300
1791	89	1801	1,025	1811 . . .	2,403
1792	195	1802	1,114	1812 . . .	2,610
1793	209	1803	1,258	1813	
1794	450	1804	1,405	1814	
1795	453	1805	1,558	1815 . . .	3,000
1796	468	1806	1,710	1816 . . .	3,260
1797	554	1807	1,848	1817 . . .	3,459
1798	639	1808	1,944		

The statistics are from Seybert's Annals, p. 378.

III.

THE APPOINTING POWER UNDER STATESMEN.

1.—THE FEDERALISTS.

THE theory of the appointing power was accepted; the question of moment was: What would be its workings when carried into actual practice? Provision had been made by which the officers of the old Confederation should remain in service until Congress could pass laws creating the officers of the new government. Thus several months elapsed, during which Washington had time to mature his plans, and those desiring positions to use every means to secure them. That office-seeking was not unknown in the golden age, we have abundant proof in the correspondence of Washington. Even before the government was fairly formed, or it was known who would be President, he received numerous letters asking for appointment in case these possibilities were realized.[1] When the result of the election was known, to one and all, friends, relatives, acquaintances, strangers, the unvarying reply was returned: "I will go to the chair under no preëngagement of any kind or nature whatsoever."[2] Laying aside every feeling that could possibly influence him as a private citizen,[3] he decided upon certain principles which should guide him in his selection. These were:

[1] Works of Washington, ix., pp. 371, 460, 461.

[2] Letter to Benj. Harrison, March 9, 1789, Works of Washington, vol. ix., p. 476. The same words are repeated in all of his letters at this time.—Vol. ix., pp. 460, 461, 478; x., pp. 136, 398.

[3] He writes to his nephew, Bushrod Washington: "However deserving you may be of the one (office) you suggest, your standing at the bar would not justify my nomination of you as Attorney at the Federal District Court in preference to some of the oldest and most esteemed general court lawyers in your own State who are desirous of this appointment."—Works, x., p. 24.

To a lady who had endeavored to arouse his sympathies in her behalf, he

1. Fitness of character to fill the office.[1]

2. Comparative claims by reason of service in the Revolution.[2]

3. As far as possible, proportionate distribution of appointments among the various States.[3]

4. Appointment of well-known men.[4]

Persons living at a distance he discouraged from making personal application, desiring only their name and testimonials as to ability, integrity, and fitness.[5] His desire to unite the interests of all parties led him to invite into his cabinet, and to appoint to other positions, those whose political opinions did not harmonize with the views of their associates or with his own. The result of the plan, as regards cabinet officers, was not such as would justify a repe-

writes that his feelings as a private individual would lead him to help her, but as a public man he must be allowed to decide upon all points of duty without consulting his private inclinations and wishes.—Letter to Mrs. Wooster, May 21, 1789, vol. x., p. 6.

Later he writes : "I have experienced the necessity in a variety of instances of hardening my heart against indulgencies of my warmest inclination and friendship."—Vol. x., p. 398.

[1] "In every nomination I have endeavored to make fitness of character my primary object."—Works, i., p. 454 ; x., p. 87.

[2] Works, i., p. 455.

[3] "My aim has been to combine geographical situation and sometimes other considerations with abilities and fitness of *known* characters."—Vol. xi., p. 78.

Virginia, Pennsylvania, New York, Connecticut, Massachusetts, Maryland, and Georgia were represented in his cabinet ; in the Supreme Court judges were appointed from New York, Massachusetts, South Carolina, Maryland, Pennsylvania, North Carolina, Connecticut.

[4] "Especially in the judicial departments my views have been much guided to those characters who have been conspicuous in their country. A readier confidence would be placed in them by the public than in others perhaps of equal merit who had never been proved."—Vol. x., p. 66.

[5] He adds that beyond this nothing is necessary or can be of any avail in his decisions.—Vol. x., p. 6.

Of his success in preserving this strict impartiality, we have the most unequivocal testimony in the words of John Adams : "No man, I believe, has any influence with the President. He seeks information from all quarters, and judges more independently than any man I ever knew. It is of so much importance to the public that he should preserve this superiority, that I hope I shall never see the time that any man will have influence with him beyond the power of reason and argument."—Works of John Adams, ix., p. 561.

tition of the experiment.[1] In his later choice of confidential advisers he determined to select those only who could give hearty encouragement to the general policy of the government.[2] His regard for the letter as well as the spirit of the Constitution, is shown by his careful reports to the Senate of all temporary appointments made by him,[3] nor did he regard their "advise and consent" a mere nominal affair.[4] Few removals were made, and in no case does removal or failure to remove seem to have caused dissatisfaction.[5] The history

[1] Mr. Sparks says: "Jefferson performed the duties of his office without letting personal views bias his conduct. Yet there is a great difference between the reluctant performance of duty and the cordial and vigorous support of a willing mind. In all respects, therefore, these disagreements (with Hamilton) were unpropitious, embarrassing to the President, and injurious to the public welfare."—"Life of Washington," vol. i., p. 474.

[2] Sept. 15, 1795, he writes: "I shall not bring a man into any office of consequence knowingly whose political tenets are adverse to the measures which the general government are pursuing, for this, in my opinion, would be a sort of political suicide."—Works, xi., p. 74. A few days later, while hesitating to offer the position of Secretary of State to Patrick Henry, because ignorant of his political sentiments, he writes: "I should consider it an act of governmental suicide to bring a man into so high an office who was unfriendly to the Constitution and the laws which are to be his guide."—Works, vol. xi., p. 78.

[3] The first session of the first Congress adjourned Sept. 29, 1789; the second session met Jan. 4, 1790. Washington sent, Feb. 9th, a tabulated list of all appointments made during the interval, and nominated these persons regularly. The Senate confirmed all immediately.—Annals, vol. i., pp. 944–45.

This was shown very early in the case of the nomination of Col. Benj. Fishbourn as Naval Officer for the port of Savannah. The Senators from Georgia had expressed a preference for another person, and for that reason the nomination was rejected. The President sent a letter to the Senate, stating fully his reasons for the selection and his confidence that it had been a wise one, but out of deference to their wishes he substituted another name.—Annals, vol. i., p. 59. This is the first hint of the subsequent doctrine. "the courtesy of the Senate."

[5] The number of removals, as taken from the House Documents, 26th Congress, 1st session, No. 132, is as follows:

In 1792	2	In 1795	5
" 1794	2	" 1797	1—10

The *Richmond Whig* gives the list (Niles, 43, 8):

In 1792	1	In 1796	1
" 1793	3	" 1797	1—9
" 1795	3		

The Annual Register, 1829–30, p. 18, gives the number as nine, one being a

of the subject during his eight years of service is uneventful. To the motives which guided his choice, even his enemies could take no exceptions, and his most worthy successors have never been able to improve upon his rules. Contemporaneous and subsequent writings all bear witness to his success in carrying out the principles laid down when he entered office.[1]

The administration of Mr. Adams was destined to be a stormy one, and his policy in appointing to office played its part in the general dissatisfaction. His dislike of all interference on the part of either Senate or cabinet was well known,[2] while men who were jealous of their own prerogatives would not yield them even in the slightest degree without complaint. Washington, it is true, had filled many

defaulter. Mr. Grundy, in his speech on Foot's resolution, March 1, 1830, *Gales and Seaton's Register*, vol. vi., p. 215, makes the following list:

1. E. Cross, Collector for the port of Newburyport.
2. Surveyor of the port of Plymouth.
3. Mr. Carmichael—foreign minister—recalled.
4. Collector of Yorktown.
5. Collector in Maryland.
6. Collector in New Jersey.
7. Collector in South Carolina.
8. Inspector of Revenue in New Jersey.
9. Inspector of Revenue in South Carolina.

If we include in this list the recall of Mr. Pinckney, the number tallies with that given in the House documents. Mr. Grundy's facts are of interest as showing that the probable cause for the removal of all but the two foreign ministers was mismanagement or appropriation of the public money.

[1] At a later period—in 1821—we find an incident recorded which is a fair illustration of the many that were current. A warm personal friend of Washington's applied for a lucrative office, and no one doubted but that he would receive it. A political enemy of the President's also applied for the same position, and all interested were amazed at his presumption, yet he received the appointment. Washington said to a friend who remonstrated: "My friend I receive with cordial welcome; he is welcome to my house and welcome to my heart, but, with all his good qualities, he is not a man of business. His opponent is, with all his politics so hostile to me, a man of business; my private feelings have nothing to do in this case. I am not George Washington, but President of the United States. As George Washington, I would do this man any kindness in my power; as President of the United States, I can do nothing."—Niles, vol. xx., p. 249.

[2] His private letters and public papers all give evidence of this feeling. See references pp. 13, 17, notes.

important offices without consulting his cabinet,[1] but his appointments were so just, and all parties so united in him, that his course not only met with no opposition, but was even approved as indicating that he was superior to partisan influence. Mr. Adams, however, had been a party candidate, and the failure or success of his administration meant the failure or success of the Federalist party. His course, therefore, was subjected to the closest scrutiny. The first open opposition was in connection with his conferring positions upon relatives.[2] Different presidents have followed different plans in this regard, but the sentiment was then, as it has been since, strongly against such appointments. Whoever chooses to violate the unwritten law, lays himself open to censure, and exposes the candidate to undue criticism.

The greatest dissatisfaction came, however, in 1799, with the nomination of Mr. Murray as Minister to France. In spite of the extremely critical situation of affairs between the two countries, Mr. Adams took the entire responsibility upon himself, and sent the nomination to the Senate without consulting his cabinet and in defiance of public opinion.[3] Before acting upon it, the Senate took the unusual course of attempting to persuade the President to withdraw the nomination. Failing in this, a compromise was effected by which a commission was formed by adding two other names, and

[1] Hildreth, v., p. 242.

[2] The opposition had been specially strong to the nomination of his son-in-law, Col. Wm. S. Smith, whose name he had sent to the Senate for the office of Adjutant-General. It was the remembrance of his rejection which probably called forth from Mr. Adams the bitter remark: "You know it is impossible for me to appoint my own relations to any thing without drawing forth a torrent of obloquy."—Works, viii., p. 636. Mr. Adams was undoubtedly influenced by honorable motives in all such nominations, believing that justice should be done to the individual as well as to the public. He wrote to Hamilton regarding a later appointment of Col. Smith, and after recounting his services during the war, says: "I see no reason or justice in excluding him from all service, while his comrades are all ambassadors or generals, merely because he married my daughter."—Works, ix., p. 63. On the other hand, at an earlier period, when Col. Smith was involved in some difficulty, he wrote him a short and cutting letter in which he says: "I will not interfere with the discipline and order of the army because you are my son-in-law."—Works, viii., p. 652.

[3] Hamilton's Works, vol. vii., pp. 706, 707.

the three were confirmed only to avert the downfall of the Federalist party. It is necessary to bear this in mind, as it is one of the main causes of the dissensions which soon broke out in the cabinet and led to still further criticism on the President's use of his power.

When Mr. Adams entered upon the duties of his office, it is known that one, and inferred that all, of Washington's cabinet tendered their resignations to the incoming President.[1] These resignations were not accepted, and hence Mr. Adams had no reason to complain of the "legacy" left him by Washington.[2] His impatience of all restraint and his fear that he would not receive full credit for his independence of action, together with his jealousy of Washington's personal popularity, and a desire to show the superiority of his own course [3] led him from the first to neglect the counsel of his nominal advisers. His course in regard to the nomination of Mr. Murray added fuel to the flames. His difficulties with his cabinet increased, until on the 10th of May, 1800, he requested the resignations of Mr. McHenry, the Secretary of War, and of Mr. Pickering, the Secretary of State, and on the refusal of the latter to comply with the request, he summarily removed him. It is true Mr. Adams had a perfect right to remove obnoxious officers, that it would have been advisable for him to do so long before he did, that Mr. Pickering should have resigned without waiting for a dismissal, yet the President has always been subject to criticism for the manner in which it was done, and for choosing the particular time that he did for the removal. The causes alleged were "certain reasons of state" and Mr. Pickering's unfitness by nature and education to perform the duties of his office. But as Mr. Pickering had been his Secretary for more than three years, and had been promoted through various grades of office by Washington without complaint having been made as to his qualifications, this could not have been of as much weight as the "state reasons" hinted at. These

[1] Hildreth, v., p. 45. Gibbs, ii., p. 213. [2] Gibbs, ii., pp. 348–354.

[3] "Washington appointed a multitude of Democrats and Jacobins of the deepest dye. I have been more cautious in this respect."—Works, ix., p. 86.

probably depended on the fact that by the loss of the New York State election, Mr. Adams' hopes for reëlection would have to be abandoned unless he could gain favor with the South. The two Secretaries had been specially unpopular in that section on account of their intimacy with Hamilton, and Mr. Adams evidently hoped by sacrificing them to gain strength there.[1] Without in any way compromising his honor by making a direct bargain with the leaders of the South, he incurred the suspicion of using his power of removal for political ends, and the act has been specially criticised on that ground.[2]

The last appointments of Mr. Adams, while upheld by his own party, provoked the most hostile feeling on the part of his opponents. Three weeks before his term of office expired, and after the result of the election was known, the Federalists passed an act providing for the appointment of sixteen new circuit judges and other inferior officers.[3] The President filled the offices with unseemly haste, regardless of the fact that he was choosing assistants for his successor and not for himself. These appointments and others, "crowded

[1] J. C. Hamilton says that the news of the New York election was received May 9th, and the following day the Secretaries were asked to resign.—"Hist. of the Rep.," vii., 386.

[2] A full discussion of the subject is found in the Cunningham correspondence, Letters xii., xiv., xvii., xxiv.; Pickering's Review of the Cunningham Correspondence, pp. 63–110; Hamilton's Works, vol. vii., pp. 687–727, and in various letters of Hamilton; Gibbs, ii., pp. 346–359; Schouler, vol. i., pp. 466, 467; Hildreth, v., pp. 324, 325, 370–373; Works of John Adams, vol. i., pp. 566–569, ix., pp. 50–56, x., pp. 4–9; also in Upham's Life of Pickering, and Lodge's Life of Cabot. A number of years after the event, Mr. Pickering published, in his Review of the Cunningham Correspondence, what he considered a true statement of the facts. He charges that after the defeat of the Federalists in New York, Mr. Adams approached some of the leading members of the opposition to know on what terms they would support him in the coming election. They named the removal of the Secretaries as the price of their services, and their dismissal soon took place. These disclosures were made to Mr. Pickering so long after the event took place that the memory of the gentlemen making them may have proved treacherous, and as no evidence, written at the time, was produced to substantiate their testimony, we can not place too great reliance upon the statements made. Mr. Adams utterly denies that any such bargain was made.—Works, vol. x., pp. 4–9.

[3] Hildreth, v., p. 401; Schouler, i., p. 492.

in," as Jefferson says, "with whip and spur from the twelfth of December, when the result of the election was known, until nine o'clock of the night of March the third,"[1] could but alienate him and his party still more from his political opponents. The act, important and necessary in itself, had met with but little opposition, and but for Mr. Adams' ill-timed policy, would probably have remained in force. As the term of most of these offices, thus filled by Mr. Adams with men who were specially opposed to Mr. Jefferson, was for life or would extend beyond Mr. Jefferson's administration, the only recourse of the Anti-Federalists was to repeal the act. This was soon done, and as a consequence the judiciary was for many years in a crippled condition.[2] The appointments had been made to compass party ends, but they served only to strengthen the opposition.[3]

The executive patronage at this time was small, yet these events show how jealously the course of the Executive was watched, and how much discussion was caused by the slightest temptation to abuse it. Few removals were made,[4] al-

[1] Jefferson's Works, vol. iv., p. 386.

[2] Hildreth, v., p. 401. Mr. Adams evidently believed that by filling these offices with distinguished Federalists he had secured the safety of the country in at least one branch of the government; yet he laid himself open to the suspicion that wounded pride and disappointed ambition had dictated his acts.

[3] A description of the "midnight appointments" is given in the Domestic Life of Jefferson, pp. 307, 308.

[4] The Annual Register, 1829–30, p. 18, states the number as ten—one a defaulter.

Senator Holmes in his speech of April 28, 1830,—Gales and Seaton, vol. vi., p. 385,—gives the number as eleven, and says that four of Mr. Adams' appointments upon removals were annulled by Mr. Jefferson, and three of the four removed were restored.

The *Richmond Whig*—Niles, 53, 8—gives:

In 1797	5	In 1799	1
" 1798	2	" 1800	2—10

In the House Documents, 26th Con., 1st. sess., No. 132, the number removed is given:

In 1797	3	In 1799	2
" 1798	1	" 1800	2—8

Failure to renominate at expiration of term:

In 1798	1	In 1799	2—3

Mr. Grundy—Gales and Seaton, vol. vi., p. 215—has the most complete list:

1. Collector of New York. 2. Collector in Charleston.

though more than during the administration of Washington, yet these few did not escape sharp criticism.

Mr. Adams sincerely endeavored to be impartial in his conduct,[1] yet he did not escape censure in his appointment of Mr. Murray, the removal of Mr. Pickering, and the "midnight appointments." No legislative or judicial decisions affected the question during his administration.

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3. Consul at Bordeaux.
4. Supervisor of Revenue in New Hampshire.
5. Inspector of Revenue in Virginia.
6. Surveyor in Virginia.
7. Collector of Perth Amboy, N. J.
8. Inspector at Perth Amboy, N. J.
9. Mr. Pickering.

One case of removal was that of Tench Coxe. Hildreth, vol. v., p. 379, says he was "a mousing politician," and a "temporizing busybody"; that he was dismissed, shortly after Mr. Adams' accession, from the office of Supervisor of the Revenue—for gross misbehavior, the Secretary of the Treasury said; for his political principles, Coxe said; but, in fact, for carrying stories about the Treasury to the *Aurora*, where they were detailed with great exaggeration. Mr. Holmes, in the speech above quoted, says that the removal of Coxe produced great excitement everywhere; even Virginia, where political opinion was no test for office, refused, on party grounds, to elect a certain Speaker, in order to show her resentment.

[1] He wrote, October 4, 1800: "Neither Mr. P. nor any other person ever had authority from me to say that any man's political creed would be an insuperable bar to promotion. No such rule has ever been adopted. Political principles and discretion will always be considered with all other qualifications, and well weighed in all appointments; but no such monopolizing and contracted and illiberal system as that alleged to have been expressed by Mr. P. was ever adopted by me. . . . There is danger of proscribing, under imputations of democracy, some of the ablest, most influential, and best characters in the Union."—Works of J. Adams, ix., p. 86.

IV.

THE APPOINTING POWER UNDER STATESMEN.

II.—THE REPUBLICANS.

THE reaction in 1801 in favor of the Anti-Federalists had caused both parties to wonder what would be the policy of the new administration concerning appointments. For twelve years the Federalists had been in power, and most of the offices in the gift of the Executive were in the hands of that party,[1] so that on this point the strength of the Constitution had not as yet been fairly tested. The policy pursued by Washington in his cabinet appointments and its disastrous result had taught a lesson that future Presidents could not overlook. Many believed and openly maintained that the same principle applied to subordinate officers. Some of Mr. Jefferson's immediate political friends urged him to make use of his power, and to institute a thorough change in the government officials. Nor was precedent lacking for such a course. In 1799, in the Pennsylvania State elections, the Republican candidate, Judge McKean, had been chosen governor. His first acts were to punish his enemies and reward his friends by turning out of office all who had opposed his election, and conferring the places thus vacated upon his

[1] Benton says that Jefferson, when elected, found himself almost the only man of his party in office ("Thirty Years' View," vol. i., p. 161), but the reason was not, as he would have us infer, and as Jefferson charges, that Republicans had been purposely excluded from office. When Washington became President, party lines were not definitely drawn, so that offices could not have been conferred for political reasons. Mr. Adams removed only a few, and officers naturally became the supporters of the party in power. There had been no reason before the accession of Mr. Jefferson to bring up the question of party in connection with appointments.

warmest supporters.[1] He was now most zealous in recommending such a course to Jefferson.[2]

In the spring of 1800 the Republicans gained the State election in New York. According to the Constitution,[3] the governor was a fifth member in the Council of Appointment, and the three Republican members immediately followed out Governor McKean's plan of proscription. The Republican ranks were divided into two opposing factions, and those belonging to the weaker one were excluded from office not less conscientiously than the Federalists themselves.[4] With these notorious instances fresh in mind, the Federalists, in the disputed election between Jefferson and Burr, had been determined not to support the former without some distinct assurance that a similar plan would not be followed in the United States offices. Mr. Bayard, of Delaware, accordingly named to a friend of Mr. Jefferson's three conditions on which they would transfer their support from Mr. Burr to Mr. Jefferson. One of these was that subordinate public officers, employed only in the execution of details established by law, should not be removed from office on account of their political belief, nor without complaint against their conduct. This condition did not apply to higher officers, as those of the cabinet, foreign ministers, etc., which they considered it not only reasonable but neces-

[1] He pursued the same policy in 1805, when reëlected by the combined votes of the Constitutionalists and the Federalists. The Republicans were now removed from office, and the Federalists rewarded for their aid by making one of their judges Chief-Justice of the State (Hildreth, v., p. 591). We are accustomed to refer to a later period the origin of the "spoils" doctrine. The credit of its introduction belongs, however, to Governor McKean, of Pennsylvania, ably seconded by the New York Council of Appointment.

[2] Hildreth, v., p. 426.

[3] New York was divided into four great districts. The Assembly selected one senator from each of these districts, and this formed the Council of Appointment. The governor acted as president, and had the casting vote, but no other voice. With the advice and consent of this council he was to appoint officers.—Constitution of 1777, Article 23. By an amendment of Oct., 1801, "the right to nominate all officers is vested concurrently in the person administering the government of this State for the time being and in each of the members of the Council of Appointment."—Poore's "Charters and Constitutions," vol. ii., p. 1335.

[4] Hildreth, v., p. 424; Jenkins, "Political Parties," pp. 84–89.

sary should be men of Mr. Jefferson's own choice; but to such inferior officers as postmasters, collectors of the revenue, etc. These terms were conveyed by a friend to Mr. Jefferson, who authorized him to say that these views corresponded with his own, that meritorious subordinate officers ought not to be removed merely on account of their political opinions, and that they might rely on him accordingly. Trusting in these statements, the opposition of Delaware, Maryland, and Virginia was withdrawn, and Jefferson was elected.[1]

He entered upon his duties, therefore, committed to the policy of non-removal for political opinions, by his assurances to Mr. Bayard, by his reiterated statements in his letters that those who had done well had nothing to fear, and those who had done ill nothing to hope,[2] and by the words of his inaugural favoring political toleration.[3] In addition, some of Mr. Jefferson's personal characteristics led him to adopt a more conciliatory policy than was urged upon him by his Pennsylvania and New York adherents. His confidence in himself and in his supporters led him to believe that these would not be alienated by refusing them office, while his opponents could be won by retaining them in their positions.[4] Thus, while denying high positions to his chief opposers, he refused to introduce a general proscriptive policy.[5]

He had been but a short time in office before he formulated his ideas on appointments and removals as follows:

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[1] American Statesman, p. 193; Hildreth, v., p. 407; Randall, ii., pp. 606–622.

[2] Jefferson's Works, vol. iv., pp. 353, 359.

[3] "We have yet gained little, if we countenance a political intolerance as wicked, as despotic, as religious intolerance."—Works, viii., p. 2.

[4] He seemed to expect the "era of good feeling" during his presidency. He expressed the hope, Feb. 14, 1801, that all distinction between Federalist and Republican would soon be lost, or at most that it would be only between Republican and Monarchist.—Works, iv., p. 353.

[5] What seems to be the best index to his policy is found in a letter to Mr. Monroe, written March 7, 1801: "I have firmly refused to follow the counsels of those who have desired the giving offices to some of their leaders in order to reconcile. I have given, and will give, only to Republicans under existing circumstances. But I believe, with others, that deprivations of office, if made on the ground of political principles alone, would revolt our new converts and give a body to leaders who now stand alone. Some, I know, must be made. They must be as few as possible, done gradually, and bottomed on some malversation or inherent disqualification."—Works, iv., p. 368.

1. Relatives should not receive office.[1]

2. Late appointments of Mr. Adams should be null.[2]

3. Officers guilty of *official* mal-conduct should be removed.

4. Good men, whose only fault was difference in political opinions, should not be removed, except attorneys and marshals.[3]

5. Removals should be made for electioneering activity, or open and violent opposition to the government.[4]

In examining Mr. Jefferson's course, in view of these expressed principles, there is no evidence to show that he ever violated the first and gave office to relatives. The late appointments of Mr. Adams, he said he did not consider even candidates for nomination.[5] In most cases, however, where commissions had been made out, he issued new commissions for those persons confirmed by the Senate, but some exceptions were made. Among these were several justices of the peace nominated under the District of Colum-

[1] "Mr. Adams degraded himself infinitely on the subject, as General Washington had done himself the greatest honor. With two such examples to proceed by, I should be doubly inexcusable to err. The public will never be made to believe that the appointment of a relative is made on the ground of merit alone, uninfluenced by family views."—March 27, 1801, vol. iv., p. 388. "My constituents may be satisfied . . . that the field of public office will not be perverted by me into a family property."—Vol. v., p. 90. Jan. 20, 1810, he wrote: "I laid it down as a law of conduct for myself, never to give an appointment to a relative."—Vol. v., p. 498.

[2] Mr. Jefferson never forgave Mr. Adams for what he considered a gross affront in his "midnight appointments."—Letter to Dr. Rush, March 24, 1801, vol. iv., p. 383. He wrote to Mrs. Adams, June 13, 1804: "I did consider his last appointments to office as personally unkind. They were from among my most ardent political enemies, from whom no faithful coöperation could ever be expected, and laid me under the embarrassment of acting through men whose views were to defeat mine, or to encounter the odium of putting others in their places. It seems but common justice to leave a successor free to act by instruments of his own choice."—Works, vol. iv., p. 546.

[3] Works, vol. iv., pp. 380, 451. His reason for making an exception in favor of attorneys and marshals was that the courts being Federal and irremovable, he attorneys and marshals should be Republican to counterbalance that influence.

[4] He learned this from later experience.—Letter of Oct. 25, 1802, vol. iv., p. 451. Letter to Gallatin, May 30, 1804, vol. iv., pp. 543, 544.

[5] Works, vol. iv., pp. 383, 386.

bia act. Between forty and fifty had been nominated by Mr. Adams on the 2d of March. Mr. Jefferson reduced the number to thirty, and of these he commissioned twenty-five of Mr. Adams' nominees and added five of his own.[1]

Under the head of official mal-conduct was included the case of the Marshal of Philadelphia, who was accused of packing juries[2]; and also several other marshals and attorneys in districts where there was complaint of a too vigorous enforcement of the alien and sedition laws. Six defaulters were also removed.[3] In all these cases he expresses the fear that the removals, though made on account of reasons for which Mr. Adams should have removed the same persons, will be ascribed to party ends.[4]

His early promise to make no removals for political purposes was not so strictly observed. The instance which excited the most unfavorable comment was the removal of Mr. Goodrich, who, shortly before Mr. Adams' retirement, had been appointed Collector of the Port of New Haven, to fill a vacancy caused by death. He was deprived of his office by Mr. Jefferson, and the position nominally given to Mr. Bishop, a man advanced in years and with impaired eyesight, but virtually intended for his son, whose college effusions in praise of Mr. Jefferson had found their way into the press and been used as campaign documents.[5] The merchants of the city sent in a vigorous remonstrance, complaining, not because the person appointed was a Republican, but because less competent than his predecessor to perform the duties of his office. The President sent a lengthy reply, which he intended not only as a vindication of his course in this particular case, but as an explanation to such of his particular friends as had urged him to remove all Federal officers. He justified himself on the ground that all offices had been held by the Federalists, who were now in the minority, and that it was but just that the party in power should have a proportionate share in the direction of public

[1] Schouler, vol. ii., p. 8. [2] Works, vol. iv., p. 386. Schouler, ii., p. 5.
[3] Gales and Seaton, vol. vi., part i., p. 387. [4] Works, iv., p. 383.
[5] "Life of Cabot," p. 427. Schouler, ii., p. 9.

affairs. This equal share could be given them only by removing those in office, since vacancies caused by death were only occasional, and resignations never occurred. When affairs should thus be balanced he hopes "to return with joy to that state of things when the only questions concerning a candidate shall be: Is he honest? Is he capable? Is he faithful to the Constitution?"[1]

It was doubtless from these considerations that he yielded somewhat to the advice of Governor Clinton and Governor McKean and made a few local removals where political feeling was very strong.[2] After these early removals he expressed his intention of abiding by his first decision and relying upon deaths, resignations, and delinquencies to give the Republicans a fair participation in office.[3]

It is impossible to determine how many cases were included in removal for electioneering activity, but the number was probably small. The majority of office-holders would not allow their political zeal to get the better of their discretion, and so heeded the President's advice and "kept quiet," thus securing their political safety. Those unwise enough to do otherwise were removed, as Jefferson believed they could not conscientiously perform their duties while thwarting the general purpose of the government.[4]

Thirty-nine removals were made[5] by Mr. Jefferson. Some of these were in consequence of his policy of economizing expenses by doing away with various offices.[6] Just how

[1] Works, iv., pp. 402–405. Hildreth, v., pp. 429, 430.

[2] Schouler, ii., p. 9. He gives the number of such removals as about sixteen during the first fourteen months of the administration.

[3] Works, iv., p. 451; viii., p. 114 (Oct. 25, Nov. 15, 1802).

[4] He wrote, July 17, 1807, in speaking of those who were tempted to use the influence of their office against the government: "I have only requested they would be quiet, and they would be safe; that if their conscience urges them to take an active and zealous part in opposition, it also urge them to retire from a post which they could not conscientiously conduct with fidelity to the trus imposed in them, and on failure to retire I have removed them; that is to say, those who maintained an active and zealous opposition to the government."—Works, vol. v., p. 139.

[5] Annual Register, 1829–30, p. 18. The *Richmond Whig* gives, 1802, 22; 1803, 27.

[6] This was especially the case in the foreign service. Mr. Murray was re-

many were not included in his four rules it is impossible to determine.[1] His friends complained because so few removals were made; his enemies because there were so many. The entire number was four times as great as that made during the first forty years of the government by any other Executive, and hence some have ascribed to him the introduction of the "spoils" doctrine.[2] The charge, however, all things considered, seems to be without foundation. The circumstances attending the "midnight appointments" and the decrease in the number of offices were causes which explain a large number of these removals. The bitterness of party feeling doubtless caused other removals to be attributed to political motives, though in reality they were made for official misconduct. The spoils system was in full operation in the States,[3] but so far from originating it or even intentionally adopting it, Jefferson resisted the entreaties of his associates who sought to press it upon him. His election was brought about by a change in political sentiment, and while Republicans had not been "systematically excluded" from office, it was a fact that Federalists filled a majority of the positions. That his course in regard to appointments and removals was as lenient as it was, is a cause for surprise; that he made some unnecessary removals should not brand

called from Holland, Mr. Smith from Portugal, and Mr. Adams from Prussia, and successors were not appointed.

Hildreth, vol. v., p. 428. Mr. Humphreys was recalled from Spain on account of long absence from the United States, and Mr. Charles Pinckney appointed in his stead. This was owing to his belief that it was unwise for the government to keep its servants long from home.

[1] Hildreth mentions the cases of Aquila Giles, Marshal of the East District of New York; Joshua Sands, Collector of New York; James Watson, Navy Agent; Nicholas Fish, Supervisor of New York Internal Revenue; Henry Miller, Supervisor for Pennsylvania,—all of them officers in the Revolution, yet removed for political reasons, and their places given to partisans of Jefferson, in one case to an old Tory.—Vol. v., pp. 428, 431.

[2] George F. Hoar says of this administration and the spoils doctrine: "The evil seed had been sown, was sprouted, and the tree was rooted and well grown more than a quarter of a century before the accession of Andrew Jackson."—*N. A. Rev.*, vol. cxxxiii., p. 469. Stickney says that Jefferson began and Van Buren established in all its fulness the spoils system.—"A True Republic," p. 73; "Life of Cabot," p. 427.

[3] See p. 34.

his administration as the source of all later corruption. Credit should be given him for resisting the strong temptation brought to bear upon him from all sides to use the government patronage for party purposes.[1]

Three proposed legislative measures came up during his administration, and one important judicial decision was rendered. The first measure proposed in Congress was an amendment to the Constitution, offered by John Randolph,[2] which provided for the removal of all judges of the United States Courts by the President, on the joint address of both Houses of Congress. Its occasion was the impeachment of Judge Chase—a mode of removal which Mr. Randolph considered too long, and uncertain as to its results. After considerable desultory debate, the question was postponed without coming to a final vote.

Two other amendments were proposed by Mr. Hillhouse, in 1808.[3] They were parts of a series of seven, the object of all being to limit the executive power. He provided that appointments should be made by the President, with the advice of both Senate and House, and that removals should take place only after the consent of the same bodies. He gave the House a share in the power on the ground that they represented the people more perfectly than either Executive or Senate, and would, therefore, have a better knowledge of applications made. The President was given power of temporary suspension and appointment. The resolutions were never acted upon, but they are an index of a desire, very prevalent at that early day, to reduce to a minimum the authority of the Executive.[4]

Shortly before the close of the administration, Mr.

[1] Several cases are mentioned where Mr. Jefferson failed to favor his personal friends as others might have done. Thomas Paine had desired a public mission, but though the President aided him in private, he refused to give him office. Callender, one of his adherents, had been imprisoned for libel, but though Jefferson remitted his fine, he refused to appoint him postmaster of Richmond, and so gained an enemy.—Hildreth, v., p. 454. Schouler, ii., p. 9.

[2] Annals of Congress, 9th Congress, 1st session, pp. 499–507.

[3] Annals, 10th Congress, 1st session, vol. i., pp. 332–358.

[4] Mr. Adams' comments on these proposed amendments are long and full of interest.—Works, vol. vi., p. 525, *et seq.*

Quincy brought before the House a resolution,[1] having in view the impeachment of Mr. Jefferson for his conduct in regard to the Boston collectorship. He charged that General Lincoln had been retained in that office two years after he had become physically incapacitated to perform its duties, and after he had urged the President to accept his resignation; that the resignation had not been accepted, as the President wished to confer the position, at the close of the administration, upon Mr. Dearborn, the Secretary of War; that thereby the business interests of the city and State had been seriously endangered. This Mr. Quincy considered a high misdemeanor, warranting Mr. Jefferson's impeachment, but after an elaborate speech, his own vote was the only one in favor of the measure.

The question of removals came up before the Supreme Court in the case of Marbury *vs.* Madison. Mr. Marbury had been appointed by Mr. Adams a Justice of the Peace in the District of Columbia, his term of office to continue five years. It was a "midnight appointment," however, and his commission, though signed, sealed, and deposited in the Department of State, had not come into his own hands. Mr. Jefferson withheld it, and suit was brought to compel its delivery. The case did not properly come within the jurisdiction of the court, but the question was fully treated, and the opinion was expressed that, "when a commission has been signed by the President, the appointment is final and complete. The officer appointed has then conferred upon him legal rights which cannot be resumed. Until that the discretion of the President may be exercised by him as to the appointment, but from that moment it is irrevocable. His power over the office is then terminated in all cases where, by law, the officer is not removable by him. The right to the office is then in the person appointed, and he has absolute, unconditional power of accepting or rejecting it. Neither a delivery of a commission, nor an actual acceptance of the office, is indispensable to make the appointment perfect." This conclusion was supported by exhaustive ar-

[1] Annals, 10th Congress, 1st session, pp. 1173–1183.

guments, and the opinion closed with the statement: "Mr. Marbury, then, since his commission was signed by the President, and sealed by the Secretary of State, was appointed; and as the law creating the office gave the officer a right to hold for five years independent of the Executive, the appointment was not revokable, but vested in the officer legal rights, which are protected by the laws of his country. To withhold his commission, therefore, is an act, deemed by the Court not warranted by law, but violative of a vested legal right."[1] It was also said by the Court, that "when a person nominated to office refuses to accept that office, the successor is nominated in place of the person who has declined to accept, and not in place of the person who had been previously in office and had created the original vacancy." A removal, therefore, is complete as soon as a new appointment is made.

The prominent part which Mr. Madison took in the formation of the Constitution had rendered his views on appointments familiar to all.[2] Not having come into office through

[1] The summary of the arguments is given in Story, ii., pp. 356–363. He says, in regard to the case: "The reasoning of this opinion would seem to be, in a judicial view, absolutely irresistible, and as such received at the time a very general approbation from the profession. It was, however, totally disregarded by Mr. Jefferson, who on this, as on other occasions, placed his right of construing the Constitution and laws as wholly above and independent of judicial decision." Mr. Van Buren maintains that the decision was unfair and partisan.—"Political Parties in the U. S.," pp. 280–302.

[2] That his views on the relation which the Senate should bear to appointments never changed, we may judge, from a letter written March 24, 1834: "The augmentation of the senatorial patronage . . . would be felt deeply in the general administration of the government. The innovation, however modified, would more than double the danger of throwing the Executive machinery out of gear, and thus arresting the march of the government altogether. . . . Should the controversy on removals end in the establishment of a share in the power as claimed for the Senate, it would materially vary the relations among the component parts of the government, and disturb the operation of the checks and balances as now understood to exist."—Works of Madison, vol. iv., pp. 342–343. The same thought, in nearly the same words, is found in his letter of August 29, 1834, vol. iv., p. 355; and of October 15, 1834, iv., p. 366. In a letter to Charles Francis Adams, October 13, 1835, he says: "I must still think . . . that the Constitution is best interpreted by reference to the tripartite theory of government." Works, vol. iv., p. 385.

a political revolution, no demand was made for a general change in subordinate officers. Nor would such a change be likely to be made by one who had insisted so strongly that the removal of a meritorious officer would be sufficient cause for impeachment.[1]

The majority of his predecessor's cabinet were retained, the place which he left vacant being filled by Mr. Smith, of Maryland.[2] While not believing that locality should be given too great prominence in selection,[3] he still faithfully carried out the principle advocated by Washington, that the executive department, as well as the legislative, should be largely representative.[4] The important questions of state during his term of office did not leave him time to give special attention to the choice of inferior officers, nor did his inclination lead him so to do.[5]

Party spirit ran high during the greater part of his term, yet but five removals were made, three of them being defaulters.[6] The dismissal of the Postmaster-General, Gideon Granger, caused considerable remark in official circles. Con-

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He adds, in the letter to Mr. Adams, that the mode of appointing to and removing from office should be fixed by the Constitution. The growth of the country, and an unforeseen increase in the number of offices, "may add weight to the Executive scale, disturbing the equilibrium of the Government."—Vol. iv., p. 385.

[1] Annals, 1st Congress, 1st session, p. 498.

[2] Hildreth says that this appointment was probably made to conciliate his brother, Senator Smith, who was one of the most influential opposers of Mr. Madison's nomination.—Vol. vi., p. 150. Schouler probably refers to the same thing when he says that Madison was conciliatory in policy and made some weak appointments.—Vol. ii., p. 280. Of his nominations as a whole, Gov. McKean writes to John Adams: "Mr. Madison has paid too great a deference to the recommendations to office by low and designing men, who stood very much in need of recommendation themselves, though excellent Democrats, if they were to be credited."—Works, John Adams, x., pp. 61, 62.

[3] He wrote to Monroe, April 23, 1824: "I think you are perfectly right in not allowing *locality* to give exclusive claims to offices of *general* concern."—Works, iii., p. 433. [4] Nine States were represented in the cabinet at different times.

[5] He excused himself from trying to secure a position for a friend, saying: "It is the usage to leave to heads of departments the selection of their own clerks; they generally have their preferences, often founded in relations, friendship, and personal confidence. My connection with such appointments is much less than may be supposed."—Works, iii., p. 26.

[6] Annual Register, 1829-30, p. 18.

trary to the wishes of the President, he had appointed to the important position of Postmaster of Philadelphia, Dr. Lieb, a person who had long been openly opposed to Mr. Madison. The President could but regard it as an act of hostility to himself, and, having long suspected his friendship, he dismissed him.[1] As he had not been removed for delinquency, his friends protested, and a resolution was introduced into the Senate asking the reason for his dismissal. It was rejected on the ground that the Senate had not the right to make such an inquiry. It is the only instance in the early history of the government of an attempt to question the motives of the President in regard to removal.

Mr. Madison met with opposition from the Senate in one other instance. In May, 1813, during the recess of Congress, he appointed as Minister to Russia, the Secretary of the Treasury, Mr. Gallatin. The latter did not desire to resign the secretaryship, but having performed the duties of the office for twelve years, the mission was regarded as a merited rest. Two weeks after he sailed Congress met, and, learning that Mr. Gallatin still held the office of Secretary, his nomination as minister was rejected by a single vote.[2]

The most important legislative action came up in 1810 concerning the appointment of members of Congress to office. The old opposition to the practice had never died out, and though in the general government it had never been carried to an alarming extent, Mr. Macon, of North Carolina,[3] now proposed an amendment to the Constitution providing that no senator or representative, after taking his seat, should be eligible to any United States civil office until after the expiration of the presidential term during which he had

[1] Hildreth, vi., 458.

[2] Adams' "Life of Gallatin," p. 480; Hildreth, vi., pp. 401, 414, 415; Schouler, ii., pp. 377–381. During the administration of Washington, Chief-Justice Jay had been confirmed as foreign minister, and during Adams' administration, Chief-Justice Ellsworth had held a similar position. Mr. Madison, therefore, had not hesitated to send Mr. Gallatin abroad, while allowing him to retain the secretaryship. Also, Annals, 13th Cong., vol. i., p. 84.

[3] This State seems always to have been specially averse to conferring office on members of Congress, probably owing to the opposite practice in the State government.—Elliot, v., 423.

served in Congress.[1] The arguments advanced were similar to those used when the same subject was before the convention.[2] Mr. Quincy, however, carried the matter still farther by moving as an amendment: "And that no person standing to any senator or representative in the relation of father, brother, or son, by blood or marriage, shall be appointed to any civil office under the United States, or shall receive any place, agency, contract, or emolument from or under any department or officer thereof."[3] He supported his amendment by a speech which Mr. Adams characterized as worthy of Juvenal or Swift.[4] But, though receiving a considerable majority, it was lost, as it lacked the necessary two-thirds vote. Mr. Macon's original proposition was lost by a vote of sixty-one against fifty-nine in favor of it.

"The era of good feeling" inaugurated by President Monroe, afforded no opportunity for change of office, nor does his course in any way seem to have provoked special criticism.[5] But little can be gathered as to his views of the way in which the power should be exercised. He was averse to the eligibility to office of members of Congress, but did not think it wise entirely to abandon the practice,[6] and there

[1] Annals, 11th Cong., 3d sess., pp. 454–905.

[2] The most pertinent remark was made by Mr. Sawyer, who said: "If a member is determined to be a knave, you cannot prevent him; he did not believe in depriving the government of the services of a respectable class of men with the hope of making knaves honest." The opposite side followed Mr. Quincy, who said: "He who has the office carries on his forehead the mark of having fulfilled the condition, and though his self-love may denominate his attainment of office to be the reward of merit, the world, which usually judges acutely on these matters, will denominate it the reward of service."

[3] Annals, 11th Cong., 3d sess.; "Life of Quincy," p. 219.

[4] Works of J. Adams, ix., pp. 633, 634.

[5] How much his course may have been influenced by his correspondence with General Jackson is perhaps an open question. The latter wrote to him, in 1816, before he himself had presidential aspirations: "In every selection, party and party feelings should be avoided. Now is the time to exterminate that monster called party spirit. . . . The chief magistrate of a great and powerful nation should never indulge in party feelings. . . . Consult no party in your choice." —Niles, vol. xxvi., pp. 164, 165.

[6] In 1818 he appointed Senator Campbell Minister to Russia, and said of his action, "that he did not approve the principle of appointing members of Congress to foreign missions, but as it had been established in practice from the

is evidence of his extreme regard for the spirit as well as the letter of the Constitution.[1] Like his predecessor, he did not wish his personal preference to have any weight in appointments made by the heads of departments.[2] He desired, as far as was consistent with his general policy,[3] to give office to Federalists.[4] Nine removals were made, and all for good cause.[5]

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first organization of the present government, and as members of Congress would not be satisfied with the opposite principle, he did not think it proper to make it a rule for himself."—"Memoirs of John Quincy Adams," iv., p. 72.

[1] The case of Alexander Smith is an illustration. He had voted while in the House for the establishment of a judicial district in Western Virginia, by which the office of judge was created. His term of office had expired, and he was proposed for the position. He was entirely qualified for it, Mr. Monroe was perfectly willing to give it to him, the letter of the Constitution permitted it. The spirit, however, did not, and Mr. Monroe refused to make the appointment.—"Thirty Years' View," i., p. 84.

[2] Mr. McLean, his Postmaster-General, relates at a subsequent time, that the President never in any way intimated a preference for a candidate when he placed several names before him. "The law has given you the right to make the appointment; I shall be satisfied with your decision." One special case is mentioned where strong claims of personal friendship might have led him to use his influence, but he refused to do so, and another person received the appointment.—Niles, vol. xliii., p. 8. Another very marked instance was in the appointment of the postmaster at Albany.—"Mem. J. Q. Adams," v., p. 481.

[3] His first object, he wrote, in reply to Gen. Jackson's letter, was to preserve the Republican party intact, and not disgust its members by too great liberality to the other party. His second object was to prevent the reorganization of the Federalist party.—Niles, vol. xxvi., pp., 165, 166.

[4] February 24, 1825, he expressed a regret that this had not been possible in a greater number of cases, yet felt that he had gone as far as he could without forfeiting the confidence of his own supporters.—"Mem. of John Quincy Adams," vi., p. 494.

[5] Two consuls were removed who had failed as merchants, and so forfeited their office; another became insane; one, at Glasgow, was engaged in a quarrel, and his removal was demanded by the British Government; another was recalled on account of the complaints of American citizens; one district-attorney in Florida was removed for abandoning his office and living in Maryland; another for illegal traffic in slaves. Charges were preferred against an Indian agent, and he was removed after evidence on both sides had been presented to the Attorney-General and he had reported the case to the President.—Annual Register, 1829–30, p. 18; Gales and Seaton, vol. vi., pt. i., p. 391.

Mr. Calhoun says that during the seven years that he was Secretary of War but two of his civil subordinates were removed. In both cases the charges were investigated in the presence of those accused, and they were not dismissed until

In Congress the eligibility of members was again discussed, and in 1820 an amendment to the Constitution was proposed by Mr. Cobb, of Georgia,[1] similar to the one offered by Mr. Macon, in 1810. The avowed object of the amendment was to secure the independence of the Legislature by removing temptation from them. Its real object was to curtail the authority of the Executive in some direction, and in this one there seemed to be a favorable opening.[2] No attempt was made to show that members of Congress when appointed to office had not performed their duties well, nor were examples of corruption brought forward.[3] The majority of the House believed that the evils were imaginary rather than real; that it was unjust to deprive the President of this means of finding men whom he knew to be well qualified for office; that it would not lessen the evil, as the President would be forced to rely upon members for information; that men who had left Congress and established themselves in business for a

after a full hearing and the reasons for removal had been reduced to writing.—Calhoun's Works, ii., p. 439.

There seems to have been an impression that too few rather than too many removals were made. Niles, in 1821, instances a person who held an accounting office, but who had such an aversion to figures that he would suffer imposition rather than add up his washer-woman's bills. Every thing was entrusted to his clerk, who was unknown to the law and irresponsible to the public. The statement is made, but without special proof, that there were many hundred cases of the same nature.—Niles, vol. xx., p. 249.

[1] Annals, 16th Cong., 1st sess., vol. ii., p. 935.

[2] John Quincy Adams wrote Jan. 18, 1821, "About half the members of Congress are seekers for office at the nomination of the President. Of the remainder, at least one-half have some appointment or favor to ask for their relatives."—Memoirs., v., p. 238. That so few such appointments were made, compared with the number of applicants, would seem to show that the President did not require a constitutional amendment to keep him from conferring office upon them.

[3] An illustration of the fact that general charges on such a subject often grossly exaggerate the facts, is the statement of Mr. Cobb that he had personal knowledge of twelve senators who had been appointed to office during that administration and of about double that number of representatives, and then adds, "probably these do not constitute one-half." Six years later an official investigation made from public documents shows that the entire number of members of Congress receiving appointments from Mr. Monroe during their term of service, or within one year after its expiration, was thirty-five.—Niles, vol. xxxvi., p. 267.

few months would be unwilling to break in upon their private work and accept office;[1] and that since it presented a choice between having work satisfactorily done by well-known and eminent men and having it poorly done, that temptation might be kept from persons of weak moral character, the interests of the country would be sacrificed by such an amendment. The question was lost by a vote of seventy-two to eighty-seven, and though often since that time brought before Congress, it has never received special attention.

In May, 1820, Congress passed an important measure limiting the term of office of all persons employed in collecting the revenue to a period of four years.[2] It was hurried through without debate and was signed by the President on the last day of the session. The professed object of the bill was to bring up for inspection the accounts of all such officers at the end of every four years, and withhold reappointment from those who were found to be remiss. Its real object, according to John Quincy Adams, was to secure the election of Mr. Crawford in the next presidential campaign.[3] Mr. Monroe signed the bill without realizing its true characacter, but owing to his great care in all nominations, for several years it was productive of no special mischief.[4]

If there was ever an occasion which would justify punishing enemies and rewarding friends, it was when John Quincy Adams came to the presidential chair. His enemies had been many and their opposition most violent; some who

[1] That this was a reasonable objection was seen in the appointment a few years later of Mr. King as Minister to England. His term of office in the Senate had just expired, and he was on the point of leaving Washington to engage in private business when the position was tendered him. Had the appointment been made a year after he had left public life, there is every reason to believe he would not have accepted.—"Memoirs of J. Q. Adams.," vi., pp. 522, 523; Morse's "Life of J. Q. Adams," p. 178.

[2] Annals, 16th Cong., 1st sess., vol. ii., p. 2598.

[3] Memoirs, vii., p. 424.

[4] Mr. Madison doubted the constitutionality of the act. Works, iii., pp. 196, 200; vol. iv., p. 343; and Mr. Jefferson was specially bitter against it. Works, vii., p. 190. It was an unpopular measure with Clay, Calhoun, Adams, and other leading statesmen.

should have been his friends had given their allegiance to others; his supporters were principally from an opposite political party, and his election was owing to opposition to other candidates rather than to zeal in his personal behalf. As soon as the decision of the House was known, an active party was formed against him, opposed not to what had already been done, nor to principles that were to guide his administration, but organized with a desire to defeat at any cost his reëlection. A modern politician would have built up a strong constituency by placing his influential friends in the most important positions. These would have gathered a large following throughout the country in general, and by subserviency to the will of "the people," a fair share of the popular favor might have been gained. What course did Mr. Adams take? He appointed as Secretary of State the person best fitted to fill the place, regardless of the insinuations cast against his motives. The position of Secretary of the Treasury he offered to his most bitter opponent in the presidential race, and when he declined it, gave it to one who had voted against him. The Secretary of War had opposed him, while a rival had also been the choice of the Secretary of the Navy and of the Attorney-General. The most important diplomatic position was given to an old Federalist who had never been his friend.[1]

Requests for subordinate office were made at this time[2] as well as four years later, and a solicitor for the people's favor might have yielded to the demand and gratified the wishes of a portion of the applicants. But what patronage could be expected from one who, five years before, had written of a penniless beggar for place, "there is something so gross and so repugnant to my feelings in this cormorant appetite for office, this barefaced and repeated effort to get an old and meritorious public servant turned out of place by a bankrupt to get into it, that it needed all my

[1] Morse's Adams, p. 178. Sumner's Jackson, p. 111. Gales and Seaton, vol. vi., pt. i., p. 391.

[2] The year before Mr. Adams' accession, there was a vacancy in the Fourth Auditorship of the Treasury. Among the army of applicants were five senators and forty-five members of the House. Cited by Niles from the *N. Y. American*, April 13, 1824.

sense of the allowances to be made for sharp want and the tenderness due to misfortune to suppress my indignation." [1]

While the result of the election was pending in the House, there was a large number of vacancies to be filled, especially in the Department of State. That there should be no occasion for suspicion that such appointments were made with reference to the election, Mr. Adams, as Secretary of State, urged the President to determine immediately upon all nominations, but not to make them public, until after the choice had been made in the House. The week before the President was chosen, he deposited with Mr. Monroe a record of his advice on all these nominations as a testimonial that he had not used such offices to promote any interests of his own. After the election, he urged the President to fill every vacancy, that no one might ever have occasion to call in question any motive of his own.[2]

Before the inauguration, efforts were made to induce him to take advantage of the four years' limitation law, and to introduce the principle of rotation in office by making different nominations.[3] On the 5th of March he sent four messages to the Senate with the renomination of every officer whose term was expiring, and wrote in his diary that night: "I determined to renominate every person against whom there was no complaint which would have warranted his removal." [4] And later he wrote of his policy in regard to the same act: "I have renominated every officer, friend or foe, against whom no specific charge of misconduct has been brought." [5]

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[1] Memoirs, v., p. 24.

[2] Memoirs, vol. vi., pp. 477, 484, 488, 490, 491, 494, 508. Jan. 23–Feb. 11, 1825.

[3] Memoirs, vi., pp. 546, 547.

[4] Memoirs, vi., p. 520. The most pressure was brought to bear upon the nomination of Marshal for the District of Indiana. No complaint was made against the incumbent, but numerous recommendations were sent in for the appointment of a brother of one of the Indiana senators, and various other persons professed a willingness to serve their country in the same capacity. Mr. Adams, as may be inferred, made no change in the office.

[5] Memoirs, vii., p. 424. The whole number of persons not renominated by him is given:

In 1827	1	In 1829	3
In 1828	4	Total	8

House Docs. 26 Cong., 1st sess., No. 132.

He had not been long in office before friends became tired of this policy and grew cool in his service, while enemies took advantage of it and used all their influence against him. Mr. Clay remonstrated, and urged the removal of the principal custom-house officers of Philadelphia and Charleston, S. C., who were not only hostile to the President, but were carrying their hostility to such an extent that all their subordinates were becoming infected. The supporters of the administration, therefore, were obliged to contend not only against their enemies, but against the administration itself, which left its power in the hands of its foes to be wielded against its friends. Mr. Adams acknowledged that there might be some truth in these affirmations, but said: "I think it best to wait some time longer before making any removals, and I see yet no reason sufficient to justify a departure from the principle with which I entered upon the administration, of removing no public officer for merely preferring another candidate for the presidency." [1]

A few months later he was considering the appointment of a Federalist as Marshal for the District of Maryland, when interested friends pointed to the unfavorable effect such an appointment would have upon the administration. It was such circumstances that led the President to write on this occasion: "Not a vacancy to any office occurs but there is a distinguished Federalist started and pushed home as a candidate to fill it, always well qualified, sometimes to an eminent degree, and yet so obnoxious to the Republican party that he cannot be appointed without exciting a vehement clamor against him and against the administration. It becomes impossible to fill any appointment without offending one half of the community—the Federalists, if their associate is overlooked; the Republicans, if he is preferred. *To this*

[1] Memoirs, vii., p. 163. A similar case had occurred in the case of a naval officer at New Orleans, who was a violent opponent of the administration. Mr. Clay urged his removal, saying that it was best to avoid pusillanimity as well as political persecution. Mr. Adams replied that his designs had not been carried out, and an *intention* would scarcely justify removal.—Memoirs, vol. vi., pp. 546, 547.

disposition justice must sometimes make resistance and policy must often yield." [1]

Day after day his time and patience were imposed upon by those who could have nothing to hope for from personal application. After such an experience he wrote: "There is no time so ill-employed as that of listening to the self-eulogium and importunities of these solicitors for petty offices when there are none to bestow. Their eagerness to obtain a promise and their propensity to construe every kind word into one, make it necessary to be reserved in conversing with them, and this becomes in their estimation chilling frigidity." [2]

Two removals were made by him: one a Marshal of Louisiana, for good cause; another, a personal friend who had been appointed by Mr. Monroe at his request. Charges were preferred against the officer, and the case was being investigated when Mr. Adams came into office. As soon as the report of the committee was made he was removed.[3]

Mr. Adams entered upon his duties urged from without to reward and proscribe, but scorning to do either, though a large class who are always found on the popular side, receiving no encouragement from him, became the followers of those from whom they could expect more. Appointments were made irrespective of party [4] and regardless of consequence. He left office a victim to his own sense of right, yet with a reputation for justice and honor which he would not have exchanged, nor his friends for him, for the temporary popularity of any "favorite of the people."

The question of the appointment of members came up in 1826 in a new form. A resolution asked for the number of

[1] Memoirs, vol. vii., p. 207. The Federalists, on account of their support in the election, laid claim to their share of appointments.

[2] Memoirs, vii., p. 254. [3] Gales and Seaton, vol. vi., part i., p. 391.

[4] Mr. Benton says of him: "I was a close observer of Mr. Adams' administration, and belonged to the opposition, which was then keen and powerful, and permitted nothing to escape which could be rightfully—sometimes wrongfully—employed against him, yet I never heard the accusation (that he had made appointments or removals for political reasons), and have no knowledge or recollection at this time of a single instance on which it could be founded."—"Thirty Years' View," vol. i., p. 159.

members who had received any office whatever during their term of service or within six months afterward, and the entire number from the time of Washington was found to be one hundred and seventeen.[1]

In 1826, in the debates on the Panama Congress, a resolution was brought before the Senate protesting against the competency of the President to have appointed ministers to that Congress without the advice and consent of the Senate, but notwithstanding prolonged discussion, nothing came of it.[2]

May 4, 1826, Mr. Benton presented the report of a committee appointed to devise means for reducing the executive patronage. One of the bills recommended that means be taken to secure in office faithful collectors and disbursers of the revenue, and the displacement of defaulters; and another to regulate the appointment of postmasters. Owing to the lateness of the hour no action was taken upon the report at this time, but it played an important part in subsequent debates.[3]

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[1] The report made was as follows :

8 years of	Washington's term	to March 3,	1797	10
4 "	John Adams' "	"	1801	13
8 "	Jefferson's "	"	1809	25
8 "	Madison's "	"	1817	29
8 "	Monroe's "	"	1825	35
13 mo. of	J. Q. Adams' "	April 13,	1826	5
				117

These were distributed among the different departments as follows :

State Department	90	War Department	16
Treasury "	3	Post-office "	8
			117

The appointments in the Department of State were :

By Washington	10	By Madison	20
By John Adams	13	By Monroe	19
By Jefferson	24	By J. Q. Adams	4
			90

Of these ninety, thirty-one were from the Senate and fifty-nine from the House.—Niles, xxxvi., p. 267.

[2] By vote of twenty-three to twenty-one, it was laid on the table.—Gales and Seaton, vol. ii., part i., pp. 383–404, 405, 589, 597–619, 623–640, 642.

[3] It is difficult to see what acts of this or any previous administration called for such a bill. Mr. Benton's speech was the only one made, and is of interest only when compared with later speeches on the same subject.—Gales and Seaton, vol. ii., part i., pp. 670, 672 ; vol. ii., part ii., Appendix, pp 133–138.

V.

PRESIDENT JACKSON'S INTERPRETATION OF THE CONSTITUTION.

GENERAL JACKSON'S election is called the result of a political revolution. That this did not necessitate a radical change in the subordinate officials, we have evidence in the words of Jefferson and the course pursued by him. The Anti-Federalists' accession to power in 1801 had been no less a revolution, and Jefferson always considered that those who had taken part in it were entitled to consideration.[1] Yet, while firmly believing that *appointments* made on that principle would please the people, he did not consider himself justified in creating vacancies to be so filled. But while the circumstances in 1801 and 1829 were identical, in that both elections indicated, to a certain extent, a change in the political opinions of the country, there were some essential differences. Jefferson found all offices in the hands of Federalists; Jackson found in office not only men of opposite political creeds, but many of his own supporters who had used their official influence to secure his election. The predecessor of Jefferson had left no patronage for the President-Elect. Thirty-eight nominations of Jackson's predecessor, the Senate had refused to act upon, that the choice might be made by the new Executive.[2] Jefferson found in some instances officers in power whose duties made them odious to the people, and he believed that other offices were unnecessary. Jackson could plead no such excuses.

[1] "In appointment to public offices of mere profit, I have ever considered faithful service in either our first or second revolution as giving preference of claim, and that appointments on that principle would gratify the public and strengthen confidence."—Works of Jefferson, vol. v., p. 136. July 17, 1807.

[2] Gales and Seaton, vol. vi., pt. i., p. 392.

The Executive who took the helm in 1829 had given forth no uncertain sound as to the principles which should actuate other men in the same position,[1]—the Chief Magistrate of a great and powerful nation was never to indulge in party feeling. October 6, 1825, the Legislature of Tennessee nominated him for the presidency in 1829. A week later, he resigned the senatorship, and in the same paper recommended that members of Congress should be made ineligible to office under the General Government during the term for which they were elected, and for two years thereafter, except in the case of judicial office.[2]

Mr. Jefferson had not believed in the reëligibility of the President, yet, for the good of his country, had been prevailed upon to accept office a second time. General Jackson did not believe in yielding to party feeling, nor in tempting members of Congress with office; yet, to those who remembered that varying circumstances often change views, and that General Jackson never forgot an injury, the words of his inaugural had an ominous sound.[3]

Immediately after the inauguration, the Senate met in executive session to act upon nominations. Of the six members of the cabinet whose names the President sent in, five were members of Congress, and within three months he appointed in addition, from the same body, three foreign ministers and four other officers.[4]

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[1] Monroe Correspondence, 1816; Niles, xxvi., 165–6.

[2] Niles, xix., p. 157. This was intended as a rebuke to Mr. Adams, and met with favor from the extreme Democratic element, who had always desired such an amendment.

[3] "The recent demonstration of public sentiment inscribes on the list of executive duties, in characters too legible to be overlooked, the task of reform; which will require particularly the correction of those abuses that have brought the patronage of the Federal Government into conflict with the freedom of elections, and the counteraction of those causes which have disturbed the rightful course of appointment, and have placed or continued power in unfaithful or incompetent hands. In the performance of a task thus generally delineated, I shall endeavor to select men whose diligence and talents will ensure in their respective stations able and faithful coöperation, depending for the advancement of public service more on the integrity and zeal of the public officers than on their numbers."—Niles, vol. xxxvi., p. 29.

[4] In addition to the members of the cabinet, he appointed Louis McLane, Minister to England; Wm. Rives, Minister to France; Thomas P. Moore,

The Senate remained in executive session until March 18th, yet little business was done.[1] As soon as they had adjourned, the reform began. Neither age, sex, nor condition was spared. *Niles' Register* headed a new column "Appointments by the President," and the names of all were followed by the suggestive words, "Vice . . . Removed." It was impossible to obtain official record of the changes made.[2] No one knew whose turn had come, whose turn would come next. Clerks who had been appointed by Washington and Jefferson, and had grown gray in the service, were dismissed without warning.[3] There had always been an understanding that so long as an officer was faithful and capable he should retain his position. Clerks were now told that no complaint had been made against them, but that their places were desired for others.[4] Men who had been appointed for service in the war, and had become invaluable servants, though, at the same time, unfitted for any other life, were replaced by persons of questionable character and ability. Untold suffering was brought upon officials, not only in Washington but elsewhere, and business interests were threatened, yet men complained, not so much of the private and public injury thus caused, as of the principle involved. Before the last of April, the custom-houses of New York Philadelphia, Boston, New Orleans, and Portsmouth had all been "reformed." In New York, where more than one third the entire revenue of the country was collected, the

Minister to Columbia; G. W. Owen, Collector at Mobile; John Chandler Collector at Portland; J. Johnson, Appraiser at New York; J. S. Stower, District Attorney for Florida. All of these were important offices.—Niles, xxxvi., p. 267; American Statesman, p. 480. Sumner says that in one year Jackson appointed more members than any one of his predecessors in a whole term.—"Life of Jackson," p. 147.

[1] Gales and Seaton, vi., pt. i., p. 385.

[2] Niles complained repeatedly that no regular lists of removals and appointments could be made out, and says that they should be given for the public instruction.

[3] Niles mentions especially the removal of Major Melville, the last survivor of the Boston "Tea-Party," and wishes he might have been spared, even if the work of the office had to be done by a deputy without extra cost to the government, "as some of the newly-appointed officers thus perform *their* duties."—Niles, xxxvii., p. 112.

[4] Curtis' "Life of Webster," i., p. 347.

principal officers were removed, and also twenty-five subordinates, while an equal number of new officers were added. His associates had testified to the fidelity and integrity of the former collector.[1] But his place was given to a violent partisan of the President's, a chronic beggar for office,[2] a man who later became a defaulter for $1,500,000.[3] With such a man at the head, and fifty inexperienced assistants, it is not surprising that business men complained.[4] The Collector of Boston was removed, and when he protested, was told that after a political revolution the unsuccessful partisan ought to submit without repining to the natural consequences of defeat.[5]

In the Post-office Department there were four hundred and ninety-one removals,[6] not including the subordinates. Of these, nineteen-twentieths were in districts where there had been the greatest safety and promptness in the mails.[7] Appointments here were made and unmade with surprising rapidity,[8] and in spite of the remonstrances of the President's

[1] Niles, vol. xxxvi., p. 163. [2] Mem. J. Q. Adams, iv., p. 133. Oct., 1818.

[3] House Docs., No. 313, 25th Cong., 2d sess. Colonel Swartwout's letters furnish the best evidence of his character. Mackenzie's "Life of Van Buren," 209, 210.

[4] Gales and Seaton, vi., pt. i., p. 378.

[5] Henshaw-Johnson Correspondence.—Niles, xxxvii., p. 101.

[6] The official report as given in Niles, vol. xxxvii., p. 105, is significant as showing the number in the different States. It is as follows:

Maine	15	North Carolina	4
New Hampshire	55	Georgia	2
Vermont	22	Alabama	2
Massachusetts	28	Mississippi	5
Rhode Island	3	Louisiana	4
Connecticut	20	Tennessee	12
New York	131	Kentucky	16
New Jersey	14	Ohio	51
Pennsylvania	35	Indiana	19
Delaware	16	Illinois	3
Maryland	14	Missouri	7
Virginia	8	Territories	5

[7] Niles, xxxvi., p. 315, Niles utters an indignant protest against these post-office changes, saying: "Political reasons never entered into its institution. Honest and capable, industrious and obliging postmasters should not be dismissed for opinion's sake. Persons are now dismissed without even the preference of charges against them affecting their 'moral character' or 'personal standing.'"—Vol. xxxvi., p. 313.

[8] At Hartford, Conn., the Postmaster, Mr. Law, was removed, and Mr. Norton appointed in his place. The latter was immediately suspended, as the

friends.[1] "Economy" had been one of the battle-cries of the campaign. One of the first practical illustrations of it was the removal of General Harrison while on the way to his destination as Minister to Columbia, the announcement of it reaching him immediately after his arrival,[2] and nearly the entire diplomatic corps was recalled, involving great additional expense.[3] The Post-office Department had been self-supporting under the former Postmaster-General.[4] The announcement was soon made that there would probably be a deficit of $100,000 during the first year of the new régime. Old and experienced officers had been removed, and the large number of new ones who supplied their places were not able to perform the same amount of work. The same was true in the collection of the revenue, where fifty additional officers were required.[5]

While the interests of the country at large thus suffered from the policy of "economy," in the city of Washington the change was most noticeable. The permanency in the tenure of office had had an important influence on the growth and prosperity of the city.[6] Men now hesitated to establish homes while their positions depended on the whims of a superior.

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friends of the administration remonstrated and sent a delegation to Washington in regard to it.—Niles, xxxiii., p. 131. A week later comes the announcement: "Mr. Norton was appointed Postmaster of Hartford on Thursday of last week, and the next day found himself removed to make place for Mr. John Niles."—Niles, xxxiii., p. 149. The same number of the *Register* contains the weekly list of removals, fifty-two in all, and says many other changes in postmasters are reported.

[1] Special complaint occurred in the removal of the Utica, N. Y., Postmaster. No charges were preferred by Postmaster-General Barry, and he had the highest recommendation from the former Postmaster-General.—Niles, xxxvi., p. 313. He was a Jackson man, appointed by Mr. Adams ("Mem. J. Q. Adams," viii., p. 192), but was removed and the place given to a "better Jackson man."

[2] Gales and Seaton, vi., 242.

[3] One of Jackson's adherents said these persons should consider it as a privilege that they were given the opportunity to visit their friends and country after long absence!—G. and S., vi., p. 247.

[4] Clay said there had been a surplus of $250,000 when Jackson came into office.—Debates, x., p. 2113.

[5] Gales and Seaton, vi., pt. i., p. 385.

[6] Curtis, "Life of Webster," i., p. 347. J. A. Hamilton said the city was in an uproar of excitement owing to removals from office.—Reminiscences, p. 139.

The corrupt use of the press was to be "reformed." Mr. Adams writes, April 16th: "The appointments, almost without exception, are conferred upon the vilest purveyors of slander during the late electioneering campaign, and an excessive disproportion of places is given to editors of the foulest presses."[1] Senator Clayton said, a little later: "The public press has been * * * not shackled by a gag-law, but subsidized * * * by salaries, jobs, and pensions granted to partisan editors. The appointment of editors is not casual, but systematic. They were appointed because they were editors."[2] *Niles' Register* for June 13th says: "About twenty-five editors of very decided, if not violent, party newspapers have been already appointed to office, and some of them to places of much responsibility and great profit."[3] Later a list was made out of fifty-five editors appointed to office during the first two years of the administration, most of them continuing to edit their papers while in office.[4]

Complaint was made that the time of the President, which should have been given to important business, was wasted in attending to applications, and many bore witness to the extraordinary zeal of the applicants. His partisans told of the "official decision and brevity" with which such visitors were treated, and said that no annoyance was felt, and that applications were not pressed in an uncourteous manner.[5]

Thus the matter stood when Congress met in December. It was estimated that two thousand removals took place during the first year, nearly all during the recess of the Sen-

[1] Memoirs, viii., p. 138.

[2] Gales and Seaton, vi., pt. i., p. 238.

[3] Niles, vol. xxxvi., p. 250.

[4] *Globe*, vol. xxii., pt. i., p. 489.

[5] Letter of "Aristides," May 2, 1829, Niles, xxxvi., p. 152. This is probably the only instance on record where a President has not confessedly been annoyed by office-seekers. The letters of his predecessors are filled with such complaints, but the friends of President Jackson say they do not desire office, and never seek it in an improper manner. "Aristides" tells us that callers "make their salutations and retire after an interview of from one to five minutes." He says that it would not do to dismiss all public officers at once, although a civil revolution had been accomplished, but "it behooves us to be patient and have confidence the good work is slowly but surely progressing."

ate.[1] The places thus made vacant had been filled by members of Congress, by partisan editors, by men lacking every qualification of ability and character.[2]

In view of what had transpired during the recess, the first message of the President was awaited with interest. In it,[3] he recommends the exclusion of members of Congress from all offices except judicial, diplomatic, or those connected immediately with the cabinet. These exceptions covered nearly all of his own appointments and included all offices which members of Congress would specially desire. He recommended also a general extension of the law limiting

[1] In Story, ii., p. 355, note by Judge Cooley, is a list cited from the *National Intelligencer* of September 27, 1832. It is confessedly imperfect, but is as follows:

Diplomatic Corps	8	Post-office	491
Executive Departments	36		
Other Civil Departments	199		734

Senator Holmes made out the following:

Nominations postponed	38	Estimated number of clerks	500
Heads of departments	5	Officers of the customs	151
Removals in departments	46	Deputy collectors, etc.	600
Other removals	150		
Post-office Department	491		1,981

—From Gales and Seaton, vi., p. 390.

A very large proportion of these included the most profitable offices in the gift of the Executive, and as each person removed a large number of his subordinates, two thousand does not seem an exaggerated estimate. Amos Kendall admits that one seventh of the office-holders in Washington were removed, and one eleventh in the government employ outside of the city.—Autobiography, p. 301.

[2] Senator Bell said of some of the first nominations sent to the Senate, that in the whole forty years since the government had existed, it would be impossible to collect a number of infamous and degraded characters in the list of United States officers equal to those then under consideration.—"Mem. J. Q. Adams," viii., 188, 189. Mr. Adams says: "Very few reputable appointments have been made, and those confined to persons who were indispensably necessary to the office."—Memoirs, viii., p. 138. "The appointments are exclusively of violent partisans, and every editor of a scurrilous and slanderous newspaper is provided for."—Memoirs, viii., pp. 144, 145. A large number of disgraceful appointments had been made in Florida. Mr. White of that State gave the President, from personal knowledge, an account of the men thus placed in office, and some of them were removed. Mr. Adams said, after an interview with Mr. White: "If he had extracted the quintessence of all the penitentiaries of the Union to represent the virtues of the government in Florida, he could not have made the appointments worse."—Memoirs, viii., 172.

[3] Annual Register, 1829–30, p. 8.

appointments to four years. This had the appearance of a desire to justify his removal of so many officers not included in the four years' limitation law. He shows that he has not forgotten the position conferred on Mr. Clay by Mr. Adams, as he recommends twice in the message the exclusion from office of representatives in Congress who may have been officially concerned in the election of President.

In view of the large number of names to be acted upon by the Senate, it was expected that a list of them would be immediately sent in. A month, however, elapsed before any names were presented, and two months before all were given to the Senate.[1] When they were at last under consideration, so unwise did most of them seem that Webster says but for the President's popularity out-of-doors, the Senate would have rejected half.[2] As it was, a large number were rejected, some of them unanimously, others with only a small vote in their favor.[3]

The two questions involved in these nominations gave rise to prolonged and stormy discussions; the first, concerned their constitutionality, the second, their expediency. On the first point it was held by a part of the opposition that the Constitution gave the President power to fill but not to create vacancies during the recess, while others believed that the Senate should decide as to removals as well as appointments. On the second point, objection was made

[1] Annual Register, 1829–30, p. 21.

[2] "Private Correspondence of Webster," i., p. 501.

[3] Mr. Lee and Mr. Gardner were rejected unanimously. A few of the others were :

	Neg.	Aff.
Mr. Decatur	43	1
Mr. Dawson	42	5
Mr. Cushman	36	9
Mr. Hill	33	15
Mr. Herricks	23	22
Mr. McRoberts	21	20
Mr. Rector	23	21

—From Annual Register, 1829–30, p. 21.

John Tyler says that when "Jackson nominated a batch of editors to office but two have squeezed through, and that by the whole power of the government here having been thrown into the scale."—"Life and Times of the Tylers," i., p. 408. The editors thus rejected "were either subsequently renominated and confirmed or generally secured better places at Jackson's hands," P. 409.

that experienced officers were removed and that the country had suffered loss through the mismanagement of new officials, the private character of many of whom was a disgrace to the nation.[1] Opportunity for discussion was given in the repeated resolutions introduced asking that reasons be given for the removal of various individuals,[2] yet the subject was too engrossing not to be introduced whenever occasion permitted.[3]

It seemed difficult to prove, in view of the decision of 1789, that the President had transgressed his constitutional powers. The way was therefore open to a renewal of the question as to what those powers were. It assumed an interesting form, as it found marshalled on the side of "implied powers" all the adherents of Jefferson and Jackson,[4] while their opponents became "strict constructionists."[5] It

[1] The greatest opposition on the latter score was to the Florida appointments, p. 60. A gentleman familiar with the circumstances had interceded with the President to withdraw the names as the persons were of suspicious character and odious to the Territory. When the President assured him that every removal had been for defalcation or oppression, he visited the Secretary of State to learn the specific charges, that they might be made known in Florida. Here he was told that the President's recollection was at fault, that they gave no reasons for removals. Mr. White then saw members of the Senate individually, and his account of the nominees was so damaging that the President sent for him, and finally withdrew the names.—"Memoirs J. Q. Adams," viii., pp. 172, 176, 177; Gales and Seaton, vi., pt. ii., p. 394.

[2] 1. Senator Barton's resolutions of March 17th.—Gales and Seaton, vi., pp. 457–467. 2. Senator Mark's resolutions in the case of Wm. Clark, removed from the Treasury Department.—G. and S., vi., pp. 467–470. 3. Senator Barton's resolutions of April 21st, in the case of Theodore Hunt.—Gales and Seaton, vi., pt. i, pp. 367–374. 4. Senator Barton's resolutions of April 26th, in case of James Carson.—G. and S., vi., p. 384. 5. Senator Holmes' resolutions of April 28th, on the general question of the competency of the President to make such removals.—G. and S., vi., pp. 385–396.

[3] Some of the most important speeches were made ostensibly on Foot's Resolution. 1. Speech of Senator Grundy, March 1st, in favor of the President.—G. and S., vi., pp. 210–220. 2. That of Senator Clayton, March 4th, on the opposite side.—G. and S., vi., pp. 224–244. 3. Speech of Senator Livingston, March 15th, in support of the President.—Gales and Seaton, vi., pp. 247–264. Other senators discussed it at less length.

[4] See especially the speech of Senator Grundy.—Gales and Seaton, vi., pp. 210–220.

[5] Speech of Mr. Clay.—Clay's Works, vi., p. 11, *et. seq.* Webster's Speeches, Whipple's edition, pp. 395–406.

was not possible, however, at this time to reverse that decision, and all resolutions calling into question the power of the President were out of place and rejected on that ground. On the side of expediency the opposition found strong arguments in the derangement of the post-office and custom-house affairs, as well as in the principle of corruption introduced. The administration shielded itself behind the number of removals made by other Executives, to which no objection had been made; in the changes introduced by Jefferson and his reasons for them; and in the principle of rotation in office.[1]

No constitutional or legislative questions were settled by all these debates of 1830; no new arguments were advanced on either side, yet they show the intensity of feeling in every part of the country.[2] But the subject was by no means dismissed. Constant agitation was the only weapon of the opposition, and they used it on every occasion. In 1832 a

[1] The point of issue was evaded entirely. Benton in his "Thirty Years View," gives nine columns ostensibly to removals by Jackson. He dismisses the subject, however, in a column and a half, in which he tells us of the great number Jackson did *not* remove, and devotes the rest of the chapter to adulations of Jefferson and platitudes on the civil service. He complains of the corruption in the service a dozen years later, but omits to mention the part played by Jackson, vol. i., p. 160, *et seq.*

Senator Grundy strained the question, and applying it to cabinet officers, dwelt upon the inconvenience caused if the President could not remove them. Of inferior offices, he claimed that if they were profitable and advantageous they should not be monopolized too long; if they were disadvantageous, the burden should not be borne too long. Of the personal suffering caused he said: "If an individual can not live without office, I pronounce him unfit for that." Senator Barton answered him by saying that no one wished to take from the President the power to remove cabinet officers. The second class, however, were public servants, and offices were not created to be used as a means of bribery, or instrument of corruption in the hands of any man.—G. and S., vi., p. 457.

[2] Maine, Missouri, and Florida were all prominent in the opposition. Senator Grundy ridiculed the idea of any unusual excitement, saying, there was the same commotion raised against Jefferson. "As well attempt to raise a commotion in the ocean by throwing in a few pebbles, as to agitate the people of this nation on account of the removal of a few subordinate officers who have held their offices already too long a period, and whose places are well supplied."—G. and S., vi., p. 218. The administration never seemed able to appreciate the difference between thirty-nine removals and two thousand.

series of resolutions was presented by Mr. Ewing,[1] asserting that the removal of public officers for any other purpose than failure to discharge their official duties was hostile to the spirit of the Constitution; and that the Senate should not confirm the nomination of any person to fill a supposed vacancy unless the previous officer had been removed for sufficient cause.

In the same year, the House asked for information in regard to the number of members of Congress appointed to office by President Jackson,[2] and at the same time, the usual amendment was proposed, making such person ineligible.[3]

In 1834, Mr. Clay presented a series of four resolutions.[4] The substance of them was that the Constitution did not give the President the power to remove at pleasure, and that means should be taken to provide by law for the non-removal of all officers without the consent of the Senate, except those in the diplomatic service.

In 1835, the entire strength of the opposition was called out in support of a bill introduced by Mr. Calhoun to reduce the executive patronage.[5] Certain sections of this provided for the repeal of the four years' limitation law, and for assigning to the Senate reasons in case of removals. The limitation law, when passed, had been felt by many to be an unwise measure. In its workings, positive injury had been avoided only by the wise course of Mr. Monroe and Mr. Adams. When all restraint was taken away, it served as a constitutional excuse to justify frequent and unnecessary removals. Calhoun, Clay, and Webster now joined forces against a common foe, though not for a common cause,[6] against not the man, but the policy he inaugurated. As in 1830, all met on common ground on the one point, that

[1] Gales and Seaton, vol. viii., p. 181.

[2] Gales and Seaton, ix., pp. 901–911.

[3] Gales and Seaton, ix., pp. 893, 894.

[4] Gales and Seaton, x., p. 834. He afterwards prided himself that these were the first introduced by him into the Senate.—*Globe*, i., 220.

[5] Gales and Seaton, vol. xi., pp. 361–392, 418–491, 495–510, 513–535, 537–539, 552–571, 576; vol. xii., pp. 2470–2482.

[6] Von Holst, "Life of Calhoun," p. 110.

the Constitution limited the President's power of removal as well as of appointment.

Calhoun saw in the abuse of executive power only the natural result of putting great authority in the hands of a single man, and made it one of his strongest arguments in favor of divided sovereignty. He took advantage of the opposition to the President's course to make his bill the entering wedge to limit the powers of the general government. Many, blinded as to the cause of the evil, went hand and hand with him. That the evil existed, all admitted; that the cause of it lay not so much in the Constitution itself as in the act of 1789, was generally believed; that the Senate, as well as the President, could make a corrupt use of the power, was entirely overlooked; the only remedy ever suggested was to take the authority from the President and give it to the Senate.

Mr. Calhoun pressed the bill, and it was passed by the Senate. A year elapsed before it came up in the House, and then only to disappear in discussion of Committee of the Whole.[1]

Mention has thus been made in detail of the most important attempts at legislation during the presidency of General Jackson, to show how keenly alive was the sentiment of a large class to the evil results of his policy. But all attempts to check it by legislative enactment signally failed.

[1] The position taken on this bill by Mr. Webster has often been assailed, especially by Mr. Adams.—Memoirs, ix., p. 224. Webster's private correspondence shows the sincerity of his views, although he publicly acknowledged that they might be colored by the character of the man in office. Writing Jan. 15, 1830, of the probable general discussion of the subject by the Senate, he says: "The power of removal as a distinct power, and as residing in the President alone, has been often discussed, but I confess I doubt its existence."—Private Cor., i., p. 483. He wrote at the same time to Chancellor Kent, asking his views on the question. The latter replied, Jan. 21, 1830, that he believed the Senate should be included in the power, but that after the declaratory act of Congress, and an acquiescence of half a century, it was too late to call it in question.—Private Cor. of Webster, i., pp. 486, 487. The thought is identical with that expressed by Mr. Webster in the debate of 1835. His important speeches on the question are: Speech at Worcester, pp. 347–352; on the presidential protest, pp. 367–392; on the appointing and removing power, pp. 394–406.—Whipple's edition.

There were several very different reasons for this. First, the only alternative ever proposed—the union of the Senate in the power of removal—was open to the same objections that had been raised in 1789, and was only a choice of evils. Second, many believed that an amendment to the Constitution would be necessary to remedy the fault, and that frequent amendments were objectionable. Third, many thought that the power was rightly placed, and that its abuse by one person did not justify interference with a principle in itself judicious. Fourth, there had always been a traditional opinion in favor of rotation in appointed as well as elective officers. Fifth, the people had gained a taste of office-holding, and, as long as there was indication that their desires could be gratified, favored no measures that would impair their prospects.

Congress was thus divided as to the cause of the evil and the remedies to be applied. The one thing that might have availed—a determined effort on the part of the President to check the wrong—was not tried. Granting that a large proportion of the removals were made by his subordinates, he is still inexcusable. The author of the presidential protest had asserted in the most unequivocal terms his belief that the Executive controlled those under his authority.[1] If his power over the funds of the nation was all-sufficient, it certainly should have been the same over all civil officers. Unnecessary removals and disgraceful appointments, whether made by the President personally, or by his agents, have made the name of Andrew Jackson the best remembered in the history of our subject.[2]

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[1] Gales and Seaton, x., pt. i., pp. 1317–1336.

[2] The most remarkable statement connected with the account of the period is made on the authority of Mr. Parton. Six weeks before General Jackson's death he said to Rev. Dr. Edgar: "What will posterity blame me for most?" Dr. Edgar gave an evasive answer, but at length said: "I think posterity will blame you most for proscribing people for opinion's sake. In Kentucky every Adams man was turned out of office except one, and he resigned because he said he should have to bear the blame of all the rascality done in the State." General Jackson replied that during all his presidency he had turned but one subordinate out of office by an act of direct personal authority, and he was a postmaster. When Dr. Edgar expressed his surprise, he repeated the statement with emphasis.—"Life of Jackson," iii., 669.

VI.

RESULTS OF PRESIDENT JACKSON'S INTERPRETATION.

PRESIDENT JACKSON had sown the seed; the fruit remained to be gathered during Mr. Van Buren's "appendix" to his administration. Numerous defalcations soon convinced the people that "change" was indeed necessary. At the close of Mr. Adams' term a deficit of two thousand dollars in the accounts of a treasury assistant had branded the officer as a criminal, and in the eyes of the opposition the President became a sharer in the crime. Now, mismanagement and corruption in every department of the government service [1] formed a painful contrast to the general honesty and purity of the pre-"reform" period. No improvement could be hoped for from a President who had been "the soul of the Albany Regency," who from his earliest entrance into public life had considered office-holders as the servants of a political party,[2] who had received and merited the credit of introducing the corruption of New York State politics into the general government, and who gave no evidence of wavering faith in a system of which he had been the avowed champion. The people demanded a change, and hoped for it only in change of administration.[3] General Harrison stood ready to promise the needed reformation. In a letter to a friend, written Dec. 3, 1838, he had said: "In removals from office of those who hold their appointment during the pleasure of the Executive, the cause of such removal should

[1] Niles has a list of seventy-five defalcations, lvi., pp. 140, 141. House Docs., 25th Cong., 2d sess., No. 111, has a full list of 183 defaulters from Jan., 1834, to Oct., 1837. H. Docs., 3d, 25th, No. 122, has a supplementary list.

[2] Letter of 1820.—Mackenzie's "Life of Van Buren," p. 30.

[3] Webster's Private Correspondence, i., p. 84.

be stated, if requested, to the Senate, at the time a nomination of a successor is made." [1] In a public speech at Dayton, in September, 1840, he promised to abridge the power and influence of the National Executive.[2] In his inaugural address, he spoke of the danger to the country from the Executive Department, "by the use which, it appears, may be made of the appointing power to bring under its control the whole revenues of the country." And he adds: "Never, with my consent, shall an officer of the people, compensated for his services out of their pockets, become the pliant instrument of executive will." [3]

Two difficulties, however, presented themselves at the outset. The first was, that incompetent, dishonest officers filled so large a proportion of positions. The good of the country demanded their removal, yet, if removed, the cry of "proscription" would be raised. But while Mr. Adams complains of the number dismissed,[4] there seems to be no evidence of unjust use of the power.[5]

The other difficulty lay in the horde of applicants. A new administration meant "change" and "reform." This, to some extent, involved the removal of old officers and the appointment of new ones. Places, therefore, were at the disposal of the President, and all who had been excluded from office desired that their talents and patriotism should have recognition. Mr. Seward tells us that before the printers' ink was dry that announced General Harrison's election, the zeal for office showed itself, and that New York State was not the least active.[6] When the time of the inauguration came, "at the White House, the office-seekers literally took possession, some, it is said,

[1] "Life of Harrison," p. 91. [2] Niles, lix., p. 70. [3] Niles, lx., pp. 1–4.

[4] "Since the close of the session of the Senate last Monday, the removals from office have commenced, and they are going on swimmingly.—Mem., x., p. 448, March 20th.

[5] *Niles' Register* of March 20th gives a list of thirty-seven appointments—the first since members of the Cabinet,—but quotes from the *Madisonian:* "The appointments which have been sent to the Senate for confirmation have been chiefly to fill vacancies," and believes that all removals and appointments which seem to be expected will take place with deliberation. Niles of March 27th notes 27 appointments, 25 of them "vice —— removed."

[6] Seward's Autobiography, p. 508.

even sleeping in the halls and corridors, in order to have the first chance in the morning. * * * Day and night, Harrison was besieged by the crowd." [1]

That President Harrison honestly endeavored to fulfil his promises for reform, we have evidence in the systematic attempt soon made. March 20th, Mr. Webster, as Secretary of State, issued circulars to the heads of all departments, saying that the President wished to correct the abuse of patronage as used to interfere with the freedom of elections. He would consider it cause for removal if partisan interference on the part of any officer in election were used, or if compensation for service were demanded. He wished it to be understood that from all collecting and disbursing officers, promptitude in rendering accounts, and entire punctuality in paying balances, would be rigorously exacted.[2] Just how far it would have been possible to carry out these principles, and if carried out, to what extent they would have remedied the evil, must always remain a matter of doubt. President Harrison's words and conduct bear the mark of sincerity of purpose, and that must have gone far toward securing improvement.

"Reform" was the popular cry, and Mr. Tyler recognized the fact in his brief inaugural: "I will remove no incumbent from office who has faithfully and honestly acquitted himself of the duties of his office, except in such cases where such officer has been guilty of an active partisanship, or by secret means * * * has given his official influence to the purposes of party, thereby bringing the patronage of the government into conflict with the freedom of elections. Numerous removals may become necessary under this rule, * * * and I would have my countrymen understand the principle of the executive action." [3] In his first annual message,[4] he brings the matter before Congress, and recom-

[1] Autobiography, p. 526. Similar testimony is given in the Crittenden Correspondence, i., pp. 136, 140, 149.

[2] Niles, lx., pp. 51, 52.

[3] Satesman's Manual, p. 1230.

[4] He calls attention to "the exercise of power which usage, rather than reason, has vested in the President, of removing incumbents from office in order to substitute others more in favor with the dominant party." "My own conduct," he says, "in this respect has been governed by a conscientious purpose

mends regulating it by constitutional measures, believing that nothing should be left to discretion which could be regulated by law. In this statement we have the key to the difficulty as it existed at that time. Every thing had been left to the discretion of the Executive, and where wholesale, indiscriminate removals were made, friends and opponents disagreed as to the wisdom with which that discretion had been exercised. All parties professed a belief that active interference in elections was sufficient cause for removal, yet it was extremely difficult to draw the line between a just freedom of expression and an unjust use of official influence. President Tyler, and all his successors in office who professed to remove only for such reasons, were still left ample room to remove many, and assert that nothing had been done contrary to their expressed words.

The question why the President's suggestion was not acted upon, and a constitutional provision adopted which should definitely mark out the power to be exercised, is a difficult one to answer. A possible explanation is the fact that, unaccountable as it seems, the masses of the people did not at heart desire such a change. The friends of the administration urged that only supporters should be given positions, and that not until all its opposers had been reformed out of office, could any restriction properly be made.[1]

to exercise the removing power only in cases of unfaithfulness, or inability, or in those in which its exercise appeared necessary in order to discountenance and suppress that spirit of active partisanship on the part of holders of office which not only withdraws them from the steady and impartial discharge of their official duties, but exerts an undue and unjust influence over elections and degrades the character of the government itself. . . . In respect to the exercise of this power, nothing should be left to discretion which may be safely regulated by law. . . . Considering the . . . probability of further increase (in the number of public officers) we incur the hazard of witnessing violent political contests, directed too often to the single object of retaining office by those who are in, or obtaining it by those who are out. Under the influencc of these convictions, I shall cordially concur in any constitutional measures for regulating, and by regulating, restraining the power of removal." —Statesman's Manual, pp. 1265–1266.

[1] The best illustration of demands of this character is found in an article cited by Niles (lxiv., p. 315), from the *American Sentinel:* "It is a duty which President Tyler owes to himself, to his *friends*, to the *Democratic party*, and to

No change was made by law in the manner of appointing and removing. But did President Tyler fulfil his personal duty and make only such removals as necessity demanded? The columns of Niles give a decided negative to such a question. During the first four months of his administration, the number of names given weekly in the *Register* amounts to two hundred and forty-one, and this is only a partial list. Of these names, all were of principal officers, and we have no clue as to the number of subordinates depending on them.[1] Worthy officers of his own party were removed,[2] editors were favored,[3] nominations insisted upon which were displeasing to the Senate,[4] changes made in the important offices of all the States and larger cities,[5] applica-

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the *country at large*, thoroughly to DEMOCRATIZE his administration, to remove from office, without hesitation, all *secret* enemies and *lukewarm friends*, and to fill their places with men from the Democratic ranks. . . . Rotation in office has generally been held to be a Republican doctrine; and an office-holder should always remember that he is liable to be removed. Those *friends* of President Tyler holding important stations, who have not the influence to benefit the administration, . . . would relieve the President from an unpleasant necessity, and would certainly exhibit the disinterested character of their friendship, BY RESIGNING."

[1] The Collector of Boston was removed, and a city paper gives the names of eleven subordinates dismissed in one day. A collector was appointed at Philadelphia, and there were said to be twelve hundred applicants for office under him.—Niles, lxiv., p. 135.

[2] Mr. Van Rensselaer was removed from the Albany post-office. The *Louisville Journal* says: "For such conduct the righteous curse of every patriot will be like a burning coal on John Tyler's head."—Niles, lxiv., 165; also, lxiv., p. 64.

[3] One important instance was the appointment of Mr. Harris as Collector of St. Louis. He had been for a long time connected with the *St. Louis Bulletin*. —Niles, lxiii., p. 145.

[4] February 27, 1843, the President sent in the name of Mr. Wise as Minister to France, but the Senate rejected it by a vote of 12 to 24. March 3d he was again rejected, 8 to 26, and a third time, the same day, by a vote of 2 to 29. Mr. Cushing was nominated Secretary of the Treasury, and rejected—19 to 27; a second time the same day, 10 to 27; and still a third time, 2 to 29.—Niles, lxiv., pp. 29–30. The Senate seems to have fully exercised its right of rejection. Niles for June 22, 1844, has a list of twenty-eight appointments, nearly all the names followed by "vice —— rejected by the Senate." Niles, lxvi., p. 37, has a list of twenty-two cabinet nominations from March 4, 1841, to March 1, 1844. The Senate confirmed seventeen, rejected five.

[5] Weekly lists in Niles, 1841–1845.

tions received from the lowest classes, and officers appointed who degraded their office.[1] Removals constantly occurred,[2] and as the close of the term approached, not only did he seek to ensure his reëlection by bribes of office,[3] but when all hope of that had to be given up, he found revenge in removing his opponents, and appointing his friends to be servants for the new administration.[4] It is difficult to con-

[1] The *Baltimore Patriot*, of March 15, 1843, says: "Every man who has any regard for the dignity of the government must deplore the low state to which the standard of appointment to office has fallen, a fact of which the lobbies and anterooms of the Executive Mansion continue to give abundant illustration in the crowds of broken-down politicians and shabby adventurers that prowl to and fro and besiege the door of the President's office."—Niles, lxiv., p.64. Some one writes: "Time was when it was an honor to be an officer, for few but honorable men could get there. Now it is in and of itself rather a disgrace, as it is difficult to avoid the suspicion that a man must have been the mean, cowardly, cringing, servile tool of a party, a mere cat's-paw, in order to get into office; and unless we know his character from some other source, we can hardly help despising him from the fact that he is in office."—Niles lxiv., p. 351.

[2] Complaint is often made of the number of removals at the beginning and close of his term, but Mr. Seward wrote, in 1842: "The evidences that the President would no longer bestow offices upon those who no longer supported him, began to increase and multiply. The post-office advertisements were taken away from the Whig papers; postmasters were removed."—Autobiography, 616. General Scott wrote, April 3, 1843: "Removals, and putting in relatives and corrupt hacks, are the order of the day."—Letters of Crittenden, i., p. 202. Niles, October 7, 1843, says: "The political wheel revolves rapidly at present, tumbling officers head over heels in rapid succession."

[3] "The more the number of his adherents melted away, the more intent upon reëlection did he become, and the more violently did he poke the fire under the boiler of the patronage-machine."—Von Holst, ii., p. 513. The *Democratic Review* has an article on the point in which it says: "Abandon this worse than idle attempt to bribe our favor. Keep your offices, or rather let their incumbents keep them, . . . Before you began upon this system, we protested against it, and forewarned you of the certain result in the united contempt of both and all parties."—July, 1843, pp. 97–101.

[4] Niles, January 25, 1845, has a list of fifty appointments, most of them to fill vacancies caused by removals, adding that a great number of removals and new appointments had been made within a few days, and the papers were complaining loudly.—Vol. lxvii., p. 321. The *Globe* of the same date says: "It is remarkable, too, that among those taken off by this new Tyler epidemic, which seems to be as fatal as the cholera he introduced among the public functionaries at his first coming in, are to be found the chief executive officers of more than one half the States of the Union."—lxvii., 369.

ceive in what further respects the record could contradict the creed laid down in 1841.

Congress made various feeble attempts to show its views of the President's management, yet most of them were actuated by partisan motives,[1] were manifestly unjust or absurd,[2] were repetitions of measures which had been attempted and failed in every preceding Congress,[3] or attempted so much that the question was turned into a farce.[4] A fitting close was made when the Senate cast their influence in favor of the spoils system, and refused to act upon the last nomina-

[1] Mr. Buchanan (June 17, 1841,) introduced a resolution asking the President to cause to be communicated to the Senate a list of all removals made by himself or the heads of departments since March 4th, together with the names of all persons removed and appointed, and a list of all removals of subordinate officers in custom-houses.—*Globe*, viii., p. 63. An amendment was offered to insert the words: "Also from the 4th of March, 1829, to March 4, 1841." But as this would show the removals made by Presidents Jackson and Van Buren, it was opposed by those who objected to the proscriptions of President Tyler, but not to those of General Jackson.

[2] March 16, 1842, Mr. Andrews offered a resolution asking for "the names of members of Congress of the 26th and 27th Congresses who have applied for office, and for what office, distinguishing between those who applied in person and those whose applications were made by friends, whether in person or in writing."—Niles, lxii., p. 61. President Tyler very justly refused to comply with such a request, saying that while appointments were official acts and placed on record, applications were in their nature confidential, and their privacy should be respected. He also intimates that such a request from the House is an infringement on executive rights, as no power was given them not strictly legislative.—Niles, lxii., p. 63.

[3] December 29, 1841, Mr. Clay introduced an amendment making members of Congress ineligible to civil office.—Niles, lxi., p. 299. Jan. 2, 1844, a resolution was offered inquiring into the expediency of providing by law that all removals from office should have the reasons assigned.—Niles, lxv., p. 303. December 17, 1844, a resolution asked for the appointment of a committee to report a bill regulating and limiting the power of removal by the Executive and heads of departments.—*Globe*, xiv., p. 40.

[4] January 10, 1843, Mr. Botts, of Virginia, presented a series of nine charges looking to the impeachment of the President, nearly all of them charging him with high crimes and misdemeanors in regard to appointments. The second specification reads: "I charge him with a wicked and corrupt abuse of the power of appointing to and removal from office. First, in displacing those who were competent and faithful in the discharge of their public duties, only because they were supposed to entertain a preference for another; and, secondly, in bestowing them on the creatures of his own will, alike regardless of the public welfare and his duty to the country."—*Globe*, xi., p. 144.

tions of the President, some of them highly honorable and of great pecuniary value.[1]

If there were any who, after the experiences of the last four administrations, still hoped for better things, they must have lost courage when they read the words of President Polk's inaugural. The subject was of sufficient moment to demand attention, but his words were few and guarded. He says that strict accountability of officers, especially of those collecting the revenue, will be required, and that all failure or delay to account for money will terminate the official connection of the officer with the government.[2] No promise is held out that faithful officers will be retained, or that the power of removal will not be used for party ends. Neither does he censure the active interference of officers in times of election.[3]

Unhampered, therefore, by public pledges, the policy of reward and proscription was carried on with even more than ordinary vigor, since the Mexican war created many new offices, and the executive patronage was largely increased.[4] Whigs were removed and Democrats appointed, solely on account of their political views and irrespective of their qualifications for position, while members of the cabinet traded in office unrebuked by Chief Magistrate or Legislature.[5]

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[1] Niles, for March 8, 1845, cites from the Washington correspondent of a New York journal: "Regret will be felt in many cases at the failure of the Senate to act, while in others, the character of the Tyler nominees was such as to leave little to mourn over." [2] Niles, lxviii., p. 1.

[3] Mr. Polk had in fact more than ten years before expressed his approval of the spoils doctrine. In a speech delivered December 30, 1833, he had upheld President Jackson in the use he made of the appointing power, saying that offices were not to be held during good behavior, but at the pleasure of the President. —Niles, xlv., pp. 315–319.

[4] Niles, May 30, 1846, says: "Seldom if ever has so vast a scope of power been in the hands of a President of these United States."

[5] An unofficial letter of the Secretary of the Treasury is published which throws light on the subject, and is its own best comment:

DEAR SIR:—On Saturday last I directed your appointment to be made out. Since that period it has been made known to me that you are and always have been a Whig. This was very unexpected intelligence to me. You never did represent yourself to me as a Democrat, but I took it for granted that such was the fact. It is impossible for me to make the removal contemplated for the purpose of appointing a Whig. I have felt constrained, therefore, to revoke the order for your appointment. I regret this very much. Our short acquaint-

Men whose services were indispensable were sometimes retained, but they complained of the entire lack of system in the government service, of the accumulation of untransacted business, of the absence of capability and willingness on the part of clerks.[1] In the Post-office Department the removals amounted to more than two thousand,[2] and numerous changes were made in the closing hours of the administration.[3]

All the efforts of Congress were directed, not to crushing the evil, but to legalizing it. In December, 1845, a resolution was adopted asking that a bill be reported regulating the appointment of officers in proportion to the ratio of population, and limiting the term of certain officers to a period not exceeding four years, and also to inquire into the propriety of limiting the term of service of all civil officers.[4]

In January, 1846, Andrew Johnson offered an elaborate

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ance had made a strong impression on my mind in your favor, and I still believe that personally you are entitled to my respect and esteem; but under the circumstances I cannot make the removal and appointment as I intended.

R. J. WALKER.

—*Globe*, vol. xxii., p. 493.

It is well also to remember that the Secretary of War was William L. Marcy, of New York, the author of the cry "To the victors belong the spoils."

[1] A letter is given from the Second Auditor of the Treasury in which he complains of the removal of the best clerks in the office, many of whom, on account of long service, had become invaluable. He mentions one appointed in 1811, one in 1813, others in 1818, 1833, etc. The business of the office was thrown into the utmost confusion. Another officer says that the accumulation of work was due to the increase of business from the Mexican war, the removal of trained clerks, and the appointment of others requiring instruction and experience to make them useful: "There is no remedy which presents itself to my mind other than again obtaining the services, as far as practicable, of the old experienced clerks and the employment of five or six . . . accountants in addition to the number authorized by law."—*Globe*, xxii., pp. 493, 494.

[2] By the official report, the number between March 4, 1843, and March 4, 1849, was:

In the year ending March 4, 1844,	588	In the year ending March 4, 1847,	393
" " " 1845,	672	" " " 1848,	295
" " " 1846,	1,197	" " " 1849,	428

—*Globe*, xxii., p. 495.

[3] One hundred and forty-six names were sent in during the last session of Congress, twenty-four during the first three days of March.—*Globe*, xxii., p. 499.

[4] *Globe*, vol. xv., p. 86.

series of resolutions providing for rotation in office.[1] In June, 1846, a bill was reported which provided for rotation and annual appointment of all subordinate officers,[2] but though debated at length, it did not come to a final vote. One more measure deserves notice, and that was a proposition made in December, 1848, that all officers of the government should be elected directly by the people.[3]

We look for the usual promises made by each new administration, and read in the address of General Taylor, March 4, 1849: "The appointing power vested in the President imposes delicate and onerous burdens. So far as it is possible to be informed, I shall make honesty, capacity, and fidelity indispensable prerequisites to the bestowal of offices, and absence of either of these qualities shall be deemed

[1] The first one reads: "Resolved: That rotation in office, in the opinion of this House, is one of the cardinal tenets in a republican form of government, and ought never to be violated on any pretence whatever, and should be practised by all administrations, regardless of party names." The whole series is a curiosity and shows so manifestly the spirit of the demagogue that it deserves a passing notice, especially in view of subsequent events. He held, first, that eight years was the longest time an office should be held when filled by the President or heads of departments, and at the end of that time the officer should be ineligible to reappointment; second, that appointments should be made on the basis of representation; third, that each Congressional district should furnish its own quota; fourth, that congressional districts should be formed into four divisions, the officers in class one vacating at the end of eight years, class two in six years, class three in four years, class four in two years,—thus providing that a new set, comprising one fourth of all officials, should be introduced every two years; fifth, that *farmers and mechanics should have a fair proportion of these offices.*—*Globe*, vol. xv., pp. 192, 193.

[2] It provided, first, that all auditors, clerks, and messengers in all the different departments should be appointed from the several States in proportion to representation; second, that actual residents be appointed from the congressional districts; third, that those first appointed shall be appointed for four years; fourth, that auditors first appointed should be divided into four classes, and one class vacate at the end of the first, another at the end of the second year, and so on, thus securing rotation and annual appointments; fifth, that a similar plan be followed with clerks; sixth, that messengers be appointed for two years; seventh, the power of removal should remain as then, but the cause for all removals should be kept on file and open to public inspection; eighth, in appointments to fill vacancies, they should be for the unexpired term; ninth, that if such officers should have remained in office eight years, they should not be reappointed to office of the same grade until the expiration of two years. —*Globe*, vol. xv., pp. 953–954.

[3] *Globe*, vol. xx., p. 31.

sufficient cause for removal."[1] But such words had come to be meaningless. Not only subordinate offices were demanded as a reward for party services, but cabinet positions were claimed on the same ground.[2] General Taylor was to be all things to all men, and the era of good feeling was to be renewed,[3] yet from the first, jealousy and threats are seen,[4] and propositions were even made for the public expression of dissatisfaction on the part of members of his own party,[5] and this dissatisfaction, not by reason of the principle at stake, but from displeasure at the division of the spoils. In the Post-office Department, twenty per cent. of the officers were removed,[6] and the resignations were nearly as many.[7]

[1] *Globe*, vol. xx., p. 327. Appendix. Before the inauguration he is reported as saying to a friend that he "denounced with unutterable scorn" the spoils maxim, and that he would not be "a supporter of the infamous system of proscription which distributes the public offices of a country as the spoils of victory."—*Globe*, vol. xxii., p. 47.

[2] Jacob Collamer writes to Mr. Crittenden Jan. 30, 1849, asking him to use his influence to secure his appointment as Attorney-General. He makes the request on the plea that he lost the United States senatorship through his electioneering for President Taylor in Vermont.—"Life of Crittenden," i., p. 337. He was appointed Postmaster-General.

[3] After the nomination, he wrote to a friend who had said that the Democrats would not vote for him if he were a party candidate, and assured him in unambiguous terms that he was *not* a party candidate, but would be President of the whole people.—*Globe*, vol. xxii., p. 537.

[4] A letter from Robert Toombs, April 25, 1850, says: "During the last summer the Government, with the consent of the whole cabinet except Crawford, threw the *entire patronage* of the North into the hands of Seward and his party." "Life of Crittenden," i., p. 365. "The President will be unwise if he neglects or proscribes my friends."—Private Correspondence of Clay, p. 586.

[5] Clay writes, June 21, 1849. "I regret extremely that many of the appointments of the President are so unsatisfactory to the public, and still more that there should be occasion for it. . . . You tell me that it will be difficult to repress an expression of the Whig dissatisfaction prior to the meeting of Congress. I should be very sorry if this was done so early, if it should be necessary —I hope it may not—to do it at all."—Private Cor., p. 587.

[6] March 9, 1850, number of offices . . . 17,780

Between March 4, 1849, and March, 1850.

Appointed on account of removals . . .	3,406
" " " resignations . . .	2,802
" " " deaths . . .	218

The offices where removals were not made were the least lucrative.—*Globe*, xxii., p. 495.

[7] Jefferson had said that resignation would never occur,—Works, iv., p. 402,—

The opposition could not remain inactive, but the mode of attack showed that resentment rather than justice was the moving cause, the humiliation of the President more to be desired than the establishment of right.[1]

As soon as Congress met in December, 1849, Senator Bradbury brought in a resolution, from which nothing could have been gained, but which occasioned prolonged and heated debates for more than a year. He asked that the President cause to be laid before the Senate all charges that had been preferred, or were on file in any of the departments, against persons who had been removed from office since the fourth of March, with a specification of the cases, *if any*, in which the officers charged had had the opportunity to be heard, and a statement of the number of removals made.[2] The entire debate turned on the question whether the President's course had been consistent with his professions and promises. The opposition claimed that the only possible interpretation of the inaugural was that officers were not to be removed unless their "honesty, capacity, and fidelity," were called in question, and a mass of facts was presented to show that removals had been made which could not be explained by these tests.[3] The majority said they did not op-

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and hence a few removals might be necessary to give both parties a fair share in the service. Now, office was regarded only as a make-shift, the uncertainty of tenure making it impossible to consider it a permanent business. Resignations, therefore, occurred as soon as other occupation could be secured.

[1] In January, 1850, a resolution was adopted asking for information as to the postmasters removed, or attempted to be removed, and the reasons for *appointments* made.—*Globe*, xxi., p. 100. Another bill was introduced to prevent the sale and farming out of offices.—*Globe*, xxi., p. 127. In April information was asked as to the part officials had taken in the last Presidential election, and what persons in the government employ were connected with the press.—*Globe*, xxi., p. 818. Frequent requests were made for lists of removals made.

[2] *Globe*, xxi., p. 74.

[3] Senator Bright, of Indiana, said that in that State there were twenty or more Federal officers subject to the approval of the Senate. Of these, one remained, "a monument of executive forbearance, an Executive who commends himself to the suffrages of the people, because he 'loathes proscription.'"—*Globe*, vol. xxii., p. 503. Mr. Bradbury read letters from representatives of sixteen different States, the words of each being, that in his own State no office of any importance was held except by political friends of the administration.—

pose the practice of removal considered in itself, and that they would uphold the policy of the administration if it would only confess that political considerations had been the causes for its removals and appointments.[1]

On the other side it was claimed that the President was perfectly consistent with himself when saying that he "loathed proscription"; that he found all offices in the hands of the opposite party, and that he would have countenanced proscription had he not made removals;[2] that active interference in elections was the cause for most removals made;[3] that the President's assurance that he would remove where he found a lack of "honesty, capacity, and fidelity," did not imply that he would remove only for these reasons;[4] that little faith could be placed in statistics, but an all-sufficient denial of the charge that removals had been made without cause would be found in the fact that General Taylor was an honest man.[5] Webster thought the resolution

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Globe, xxii., p. 539. A list is given (p. 543) of the number of heads of bureaus and their clerks:

March, 1849.—Number in office		56
Whigs	17	
Democrats	39	
March, 1850.—Number in office		62
Whigs	53	
Democrats	9	

Of the fifty-six in office March, 1849, thirty-two had been removed before March, 1850. Of the thirty-nine Democrats in office in 1849, only six remained at the end of the year, the places of the others having been filled with Whigs. Only one Whig was found lacking "honesty, capacity, and fidelity," and so removed.

[1] Senator Bradbury closed one of his speeches by saying: "It is not the policy of removals that I assail or call in question; it is the inconsistency between the professions and practices of the party in power."—*Globe*, xxii., 51, Appendix. Franklin Pierce, a few years before, had said the same thing: "Whatever was done by the late administration (Van Buren's) was not done under false pretences. . . . We stood before the nation and the world on the naked, unqualified ground that we preferred our friends to our opponents; that to confer place was our privilege, which we chose to exercise. . . . That removals have been made is not the thing of which I complain; I complain of your hypocrisy."—*Globe*, vol. viii., Appendix, p. 159.

[2] *Globe*, xxii., p. 486.

[3] They failed to prove that this test had been applied to officers of their own party. [4] *Globe*, xxii., p. 500. [5] *Globe*, xxii., p. 504.

unconstitutional, as it was an interference on the part of the Senate with executive prerogative.[1]

The entire discussion was only a superficial treatment of the evil; the resolution itself was but a temporary expedient, designed to humiliate a victorious party. Instead of sound, incontrovertible argument, we find a vast array of charges and countercharges, with vindications of the character of those appointed and removed, and often excuses for wrong because previous administrations had done wrong. Only in a single instance do we find an attempt to go to the root of the matter. Senator Underwood saw no remedy except in an amendment to the Constitution. "Until you do that, we shall have administration after administration practising this doctrine of 'spoils' or the doctrine of 'equalization' to the end of the government."[2]

Little could be hoped for from such an administration,[3] and from such a Congress, containing, as it did, men who twenty years before had been in the front ranks among the opponents of the spoils system, but who now upheld it.[4] The closing hours of the administration, however, furnish

[1] *Globe*, xxii., p. 1125.

[2] *Globe*, xxiii., p. 39. Each party sought to evade the real question by protestations of patriotism and of a desire for the general good, often carried to such an extent that it became difficult to determine the subject under discussion, or which side the speaker advocated. The following extract from a speech of Senator Mangum is a fair illustration: "If you were to strike the sun from the firmament and leave but a slight sparkling scintillation behind, this great solar system of ours would not be much more immersed in darkness than would the world be if this example of our free government and free institutions were to fail. Every man ought to work for it, every patriot is willing to die for it, and I trust in God it will be perpetual."—*Globe*, xxiii., Appendix, p. 292.

[3] As an example of its continuation under President Fillmore, we have a letter from Mr. Clayton to the Attorney-General. He speaks of a family "who have spent a fortune for the Whig party and have never received a favor from it." Reward was now desired, and he writes: "Do not leave the President until you get a promise that young Dupont shall have the first vacancy. This little appointment will do more to enable us to redeem the State at the next election than any thing else the President could do for us."—Crittenden, ii., p. 11.

[4] Senator Ewing, in 1832, had expressed very emphatically the belief that all removals should have the reasons for them assigned to the Senate (p. 64). Now, he became one of the most active opponents of Senator Bradbury's resolutions.—Speeches in *Globe*, vol. xxiii., pp. 38, 80, 81, etc.

the first evidence of a realization that all previous efforts for reform had been made on a wrong basis. Hitherto every legislative act had in general attempted either to curtail the power of the Executive or to regulate, not eradicate, the evil of rotation. Various measures had been passed by which the removal of incompetent officers could be secured, but not a single one to guard against such persons receiving office. It was apparently impossible to secure an impartial discussion of such a measure, and therefore an act was passed March 2, 1853, as a rider to the civil appropriation bill, providing for the classification of clerks in all the departments except that of State and of Justice, and that no person should receive an appointment in either of the four classes until after he had been examined and found qualified by a board of three examiners.[1] The step was apparently a long one in the right direction, and the act was for many years upheld by those who resisted all attempts at a radical change in methods of appointment, as one that guaranteed the selection of only meritorious persons. But the act was far from being a model one. Its most important defects were: first, the element of competition was wholly lacking, the person who passed the best examination being placed on the same footing as one who secured a mere passing mark; second, the board of examiners in each department consisted of the chief of a bureau and two others appointed by the head of the department, and thus no security was given against political influence or personal favoritism; third, the nature of the examination being optional with the board, there were practically five examining bodies without uniformity of method, and each irresponsible; fourth, any examination which could not be free and open to all must be an unfair and superficial test. The act, when enforced, resulted in empty form; examinations were made difficult to exclude candidates not desired, and relaxed in favor of personal or political friends, and its only effect seemed to be to hinder the work of genuine reform.[2]

[1] *Globe*, 2d sess., 32d Cong., pp. 896, 1048.

[2] As every examiner was a law unto himself and too often an experienced

The diffuse expressions of President Pierce's inaugural were capable of almost any interpretation, yet in reality gave evidence of a desire to place in office only his political adherents.[1] In spite of the act of 1853, reward and proscription was carried on as usual by the "Professors of Political Engineering," as party managers were dubbed. The Post-office Department was in a deplorable condition, letters were lost or delayed, and those containing money were robbed, the majority of the subordinates were mere party pensioners, while the more ambitious ones who performed the work scarcely had time to learn their duties before they were superseded. Here and there a warning voice was raised that no well-ordered service could be expected until the patronage of the department should cease to be the reward of political service,[2] but the law of 1853 seemed to preclude any further attempt at general reform.

The act of 1853, ineffectual as it was, had not included the Department of State, yet no part of the public service demanded a more thorough regeneration. The evils of the spoils system were not brought to every man's door, as was the case in other departments, but were quite as apparent to those who came in contact with the diplomatic and consular service. Desirable as was permanency in the subordinate positions elsewhere, it was almost indispensable here, and to no one was the fact more apparent than to Mr. Marcy himself while Secretary of State under Mr. Pierce. Largely through his efforts an act was passed, and approved August 18, 1856, providing for the appointment of twenty-

politician, we are not surprised that the entire examination often consisted of the following specimen questions: "How many are four times four?" "What did you have for breakfast?" "Who recommended you for appointment?" "Where would you go to get your pay at the end of the month?"—Senate Reports, 3d sess., 46th Cong., No. 32. J. D. Cox, in *N. A. Rev.*, January, 1871.

[1] He says: "Occupancy can confer no prerogative, nor importunate desire for preferment any claim. A claim for office is what the people of a republic should never recognize." He does not commit himself positively, yet intimates that no reasonable man of any party could expect the administration to retain persons known to be under the influence of political hostility and partisan prejudice in positions which would require "not only severe labor, but cordial coöperation."—Whig Almanac, 1854, pp. 26–27. [2] *Harper's Monthly*, Oct., 1855.

five consular pupils after examination by the Secretary of State. It was thought that the salary of one thousand dollars a year would be sufficient to attract into the service young men who would be glad to prepare themselves for their work by learning the language of the various posts where they were stationed, and the technical duties of the position. In time, promotions to the higher grades of service could be made from their number, and thus greater efficiency be secured than was possible where all vacancies were filled by unsuccessful politicians, invalids in search of health, or persons desirous of travelling abroad at government expense. Every thing promised well, but the following session, when the appropriation bill was under discussion in the House, the item in regard to the consular clerks provoked great opposition and was struck out, while a proposed amendment in the Senate restoring the appropriation was voted down.[1]

When President Buchanan entered upon his duties, the system of rotation had been in operation twenty-eight years and no check had been put upon it by either executive or legislative act. Mr. Buchanan had been, at least by implication, an advocate of the theory, as is shown by his opposition, in 1835, to Mr. Calhoun's patronage bill. Even had he realized the enormity of the evil, it was not to be expected that an Executive who could find no constitutional means for putting down the rebellion, could find one for resisting the system of rotation. The tendency at the North was in favor of proscription; at the South, against it,[2] and a desire

[1] Globe, 1st sess., 34th Cong., appendix, p. 28 ; 3d sess., 34th Cong., pp. 216, 368 ; *N. A. Rev.*, Oct., 1869.

[2] The democracy of Chesterfield, Va., resolved : "That, while we do not favor incumbency without merit, *the doctrine of rotation in office is a doctrine alien to our people and to which, as Democrats, we are utterly and unalterably opposed.*"—*National Intelligencer* (Tri-weekly), March, 26, 1859.

"It is the fatal doctrine of passive party obedience, and non-resistance—a doctrine so long and successfully inculcated by the party in power—that has brought the affairs of our country into their present deplorable condition . . . This mercenary and slavish doctrine has been enforced by the terrors of excommunication on the one hand, by the slavish promises of reward on the other. 'To the victors belong the spoils of victory,' is the motto emblazoned on their standard. The offices, the employments of the government, are no longer, in

to be all things to all men led President Buchanan to give each section what it specially favored, with the usual result of displeasing all factions. As it was understood that rotation would in general prevail, Washington was thronged with even more than the usual number of place-seekers,[1] and the "claims" of various persons urged with the greatest audacity.[2] With the leading appointments made from political pressure, it was only a natural result that those receiving them improved their opportunities to pay their political debts,[3] and to provide for impecunious rela-

their eyes, public trusts to be conferred and administered for the public good; but of every grade and description, from the highest to the lowest, they are the legitimate booty of a conquering party, to be dealt out in largesses and rewards to its followers."—Speech of Wm. C. Rives, at Richmond, May 3, 1859.

A statement that rotation in office was to be carried out with "inexorable vigor," elicits from Alabama "a round denunciation of all systems of reward and punishment for opinion's sake as contrary to the spirit of our republican institutions, corruptive in its influence on the minds of men aspiring to political distinction, and, consequently, debasing to the moral character of the nation. Such systems may make subservient party menials, but not high-minded, patriotic officials."—Alabama Correspondence, *Daily National Intelligencer*, May 12, 1857.

The South, an independent Democratic paper of Richmond, contains a similar indignant protest. See also *N. Y. Weekly Times*, March 21, 1857.

[1] One reporter asserted confidently that the mass of applications for positions, sent in at the time of the inauguration, could not be examined in fifteen years if the heads of departments should give their entire time to that business. There were two hundred applications for the twelve first-class missions, and two hundred and fifty for eleven vacancies in second-class missions.—*N. Y. Times*, May 9, 1857; *National Intelligencer*, May, 16, 1857.

[2] Among others, a meeting was held in Washington of all the New York Democrats then in the city, and a ballot taken for all the candidates for the Federal offices of New York City to be recommended for appointment. On the list was Isaac V. Fowler, who became postmaster, and whose "irregularities," at the lowest estimate, amounted to $155,000, and several others who were notorious ward politicians. Most of those recommended were appointed.—*Nat. Int.*, March 20, 1857.

[3] A pertinent illustration is found in the following circular addressed to each administration member of Congress from New York:

CUSTOM HOUSE, NEW YORK, *Sept.* 17, 1858.

SIR: Being about to nominate to the Secretary of the Treasury, for confirmation, a list of appointments for this office, I would be gratified to receive from each administration member of Congress from this city, a list of the names of the persons in his district he desires appointed, with the offices attached. As

tives,[1] making the foreign service of the government a by-word and a laughing-stock.[2] When the party in power felt itself in the throes of dissolution, political assessments were levied to prolong a rule maintained by patronage.[3] When President Buchanan left office, the spoils system had reached the lowest depths. For a generation the government service had been insidiously used to build up the power of the slaveocracy. The enemies who threatened the foundations of the Union did not strike their first blow at Sumter and at Anderson, but their agents had sat in the Treasury and directed it in favor of a section; they had governed the Post-office Department in the interests of Southern prejudice; cabinet officers had sent our army to the western frontier,

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the number must necessarily be limited, you will please place the names in the order in which you are most desirous of speedy action, and I will do the best I can. As you must be aware I cannot make appointments without making vacancies by removals, you will please furnish the names of such persons holding office under me in your district whom you are desirous shall not be removed.

Yours very respectfully,

AUGUSTUS SCHELL.

—*Tri-weekly Nat. Int.*, Sep. 22, 1858.

In accordance with this policy, three hundred and eighty-nine officers (out of six hundred and ninety) were removed during Mr. Schell's term.

[1] Gen. Dix states that when he became Postmaster at New York, in place of Mr. Fowler, he found in office a young man from a Southwestern State, who came to the office for one hour on Saturday afternoons and copied letters, receiving $800 a year, while many of the clerks who worked all day, six days in the week the year round, were receiving $600 and $700 a year. He dismissed him, and a few days afterward received letters from Washington signed by a number of senators and representatives, one of whom afterward became President of the United States, asking him to restore the clerk. The restoration was urged by the principal member of Congress, who was his relative, on the ground that he had gone to New York to study law, and that he was appointed with the understanding that he was not to perform the usual duties. Memoirs of J. A. Dix, vol. ii., pp. 213-215, 391-393.

[2] Mr. Cass, while Secretary of State, made an unavailing attempt to improve the consular service by renewing the plan of 1856, for consular pupils.—*N. A. Rev.*, Oct., 1869.

[3] The *Washington Union*, the administration "organ," made the announcement, August 12, 1858: "If there is a person in the government service who does not voluntarily contribute the amount, at least, of two dollars and a half a year on each thousand dollars of his salary to support the cause of democracy, he should be dismissed and his place filled by one who is patriotic and liberal enough to double the contribution."

and our navy to distant seas; they had intrigued in foreign courts, and openly boasted that they would use the halls of Congress to thwart the plans of those who believed in the justice of the national cause.[1] What was the condition of the country in 1861 but a natural result of the lesson taught for more than thirty years, by precept and example, that public trust was to be used for personal and party ends; that traffic in office was a legitimate part of every politician's duty, and the government service a lottery where prizes were redistributed every four years to those who had advertised its merits with most success?

[1] Andrew Johnson, after the election of 1860, had not advocated secession, believing that in the Senate they could best fight the battles of the South. "And how? We have the power even to reject the appointment of cabinet officers of the incoming President." Thus they could, "at the very start, disable the administration . . . So far as appointing abroad is concerned, the incoming administration will have no power without our consent. If we remain here . . . it . . . has not even the power to appoint a postmaster whose salary exceeds $1,000 a year, without consultation with, and the acquiescence of, the Senate of the United States."—*Globe*, 2d sess., 36th Cong., p. 309.

VII.

ATTEMPTS AT REFORM.

DURING the first period of our history all questions concerning a candidate for office had been summed up in Mr. Jefferson's famous words, "Is he honest, is he capable, is he faithful to the Constitution?" During the second period these had given way to, "What help can he give in the next election?"[1] At the beginning of the third period, it was necessary to ask, "Is he loyal to the Union?" If the government was not to be destroyed before it could marshal its forces in the field, hundreds of Confederate sympathizers must be removed. In the horde of applicants for place, whose merits Mr. Lincoln once gravely proposed to decide by the avoirdupois weight of their recommendations, the President found a gloomy satisfaction—the people they represented still had confidence in the government.[2] Had there been in 1861 a well-organized system for appointment and removal, time invaluable for the consideration of other questions need not have been wasted in dispensing office to men whose patriotism did not lead them south of Washington.[3] Something must be done to relieve the pressure upon

[1] Among numberless instances is found a letter to Mr. Clay from a gentleman suggesting the advisability of Mr. Clay's favoring the nomination of a certain person as Collector at New York. It was urged on the ground that he was able "by his skill in planning and combining to produce the most astonishing political results." If he was given the office of Collector, "he could on all important occasions command the vote of the city of New York, and, *par conséquence*, of the State."—Private Correspondence, Jan. 18, 1841.

[2] Stoddard's Lincoln, p. 207. Julian, pp. 193, 194.

[3] Mr. Lincoln said, a month after his inauguration, "I wish I could get time to attend to the Southern question . . . but the office-seekers demand all my time. I am like a man so busy in letting rooms in one end of his house

the President and heads of departments, and apparently with this in view in 1861 the last bars were thrown down which had kept out undue legislative influence in making appointments. Up to this time, while members of Congress had undoubtedly had great influence in securing positions for constituents, they had not looked upon it altogether as one of their perquisites. But when the official announcement was made that the appointment of postmasters with salaries less than $1,000 per annum would be made upon the recommendations of members of Congress in the different districts, and that applications addressed to them would receive attention earlier than if sent to the department,[1] a last and fatal surrender of one of the chief executive functions was made to an ally that has since too often played the part of traitor. Yet neither Mr. Lincoln nor his administration was responsible for the final yielding; it had been inevitable since the seeds of the spoils system were first sown and the absorbing question of the war had hastened, not occasioned, the result.

The question of the public service gave place for a time to one of greater moment. But amid the pressure of other cares, Mr. Seward found opportunity to urge once more the necessity of trained servants in our consular positions, and after great opposition a bill was passed in 1864, providing for thirteen consular clerks to be appointed by the President after examination by the Secretary of State.[2] With this excep-

that he cannot stop to put out the fire that is burning the other. . . . It does appear to me that our people are fast approaching the point where it can be said that seven eighths of them are trying to find out how to live at the expense of the other eighth." And again—"If ever this free people, if this Government itself is ever utterly demoralized, it will come from this wriggle and struggle for office, that is, a way to live without work."—*Globe*, 2d sess. 42d Cong., p. 2513.

[1] Washington Correspondence—*N. Y. Weekly Tribune*, March 16, 1861.

[2] The object and provisions of the bill were similar to those of the one defeated in 1856. *Globe*, 1st session, 38th Congress, pp. 1092, 2215; appendix, p. 182. Mr. Henry B. Adams, in *N. A. Rev.*, Oct. 1869, gives a very interesting account of the way in which it was carried out for a few years. The experiment met every expectation, eleven consular clerks were appointed and three promoted to consulships, but President Grant removed two of them to make room for political friends. No further appropriations were made.

tion all agitation of reform was laid aside until the close of the war.

To those familiar with President Johnson's previous attitude, there could have been little question as to how far he would support any efforts looking toward improvement. In 1846 he had advocated rotation in office in its most flagrant form.[1] In 1861 he had asserted that it was the right and duty of Southern senators to thwart every plan of the incoming administration, by rejecting all presidential nominations not advantageous to the South.[2] When, therefore, in 1865, he found himself at the head of a party with which he had no political affiliation, conscientious scruples did not deter him from using the patronage of the government to destroy the organization that had inconsiderately raised him to power, and to build up another favorable to the interests he represented.[3] The climax came in 1866, when he openly defied the power of Congress to check his course.[4] The

[1] *Ante*, p. 76, note.

[2] *Ante*, p. 86, note.

[3] From April, 1865, to December, 1866, the number of removals made was as follows, being about twenty-five per cent. of the whole number of officers:

Department of State—	
Number subject to confirmation by Senate	340
Number appointed during the recess	17
Treasury Department—	
Number subject to confirmation	973
Number of changes	278
Post-office Department—	
Whole number	709
Number of changes	222
Department of Justice—	
Whole number	202
Number of changes	34

In the Interior Department 68 removals were made; the number of officers is not given.—Executive Documents, 2d sess., 39th Cong., No. 67.

[4] In his speech at St. Louis, Sept. 8, 1866, he had said: "I believe that one set of men have enjoyed the emoluments of office long enough, and they should let another portion have a chance. How are these men to be got out unless your Executive can put them out?—unless you can reach them through the President? Congress says he shall not turn them out, and they are trying to pass laws to prevent it being done. Well, let me say to you: If you will stand by me in this action; if you will stand by me in trying to give the people a fair chance—to have soldiers and citizens to participate in these offices. . . . I will kick them out; I will kick them out as fast as I can."—*Tribune* Almanac, 1869, p. 23.

country felt that a crisis had indeed come that demanded the labors of a "political Hercules."

Two courses were open—one, to lay the axe at the root of the deadly upas and destroy it root and branch; the other, to lop off the larger branches and expect the root and trunk to change their nature; to cut out the cankering sore that was corrupting the body politic, or to conceal the hideous sight from public gaze by clothing it in fresh garments. The first was a task long and difficult in proportion to the magnitude of the evil to be overcome; the second promised temporary relief, and answered better the ends of those who reaped profit from the ills of the government. The question was fairly put before Congress, December 20, 1865, when Mr. Jenckes, of Rhode Island, introduced into the House his first bill to reform the civil service.[1] A conscientious statesman, an able lawyer, a painstaking and industrious scholar, he had entered Congress in 1863 and been profoundly impressed by the marked difference between the civil service and that of the army and navy. An inquiry into the cause led him to study the history of other nations, to see if the same evils existed elsewhere.[2] Exhaustive research proved to him not only that they had existed in England, France, Belgium, and Prussia, but that they had been cured.[3] The result of these investigations was embodied in the plan presented to Congress. In a word, its object was to secure efficiency in the civil service by substituting for the public and private auction of government offices the system of competitive examinations employed in Western Europe. The battle for civil-service reform was fairly begun, but few recruits were enlisted, for no bounties were offered. In Congress, where

[1] Mr. Sumner was the first to suggest a measure involving competitive examinations and promotions on merit. He introduced such a bill, April 30, 1864. It was favorably criticised by the press, but other business in Congress prevented further action.—*Globe*, 1st sess., 38th Cong., p. 1985. Works of Sumner, viii., pp. 452–457.

[2] Speech of Feb. 6, 1867.

[3] Mr. Jenckes' investigations were ably supplemented by those of Mr. Patterson in examining the condition of our consular service (Report in Senate, July 2, 1868), and at a later time by the work of Mr. Andrews, U. S. Minister at Stockholm, who made a thorough examination of the civil service of Sweden.

the majority had plans of their own in regard to the civil offices, the bill was transferred from one committee to another, its consideration postponed time and again, its provisions regarded with sublime indifference by those who should have been its friends, sneered at by more than one prominent member, who asserted that our civil service was "the best in the world," and that its adoption would mean death to our republican institutions,[1] and finally, after more than a year's delay, tabled by a vote of seventy-two to sixty-six.[2] Another attempt a year later met with a similar fate.[3] Yet the advocates of the new measure were not discouraged. If it had not won a numerical majority in Congress, it had enlisted many warm friends, while the most independent members of the press represented by *The Nation* gave the measure from the first their unswerving support.

But Congress resented the imputation that it was not in favor of reform. "This particular measure," to quote a pleasantry of *The Nation*, had not met their approval; it was depriving them of one of their most useful tools for maintaining their own power. They would cure the evil by covering it up. Accordingly the same body that rejected the Jenckes bill, passed the Tenure-of-Office bill by an over-

[1] It is specially interesting to read Mr. Logan's opinion of the bill, especially when compared with his after-dinner speech at the reception given him in Boston, June 29, 1885, when he was glad to claim civil-service reform as "the child of the Republican party." When the Jenckes bill was under consideration, he maintained: "It is bad in theory, wrong in principle, opposed to the genius and spirit of our institutions and our people, and probably unconstitutional in its legal aspect. I regard the introduction of a bill like this, and the favor with which it has thus far been received by both parties and the press of the country, as one of the most alarming signs of the inauguration of a policy which, if persisted in, will end in the obliteration of all that is republican in this government, and the substitution of that which is monarchical in its stead. . . . When I read the report of the committee, . . . and find their whole plan is taken openly, boldly, and without disguise from monarchical governments, I cannot doubt what its results will be, if I could doubt the intention."—*Globe*, 3d sess., 40th Cong., p. 262.

[2] Feb. 6, 1867.—*Globe*, 2d sess., 39th Cong., p. 1036.

[3] The bill was introduced by Mr. Jenckes, March 23, 1868, and reported May 14th, but Congress adjourned without taking any action on it.—*Globe*, 2d sess., 40th Cong., pp. 2069, 2466.

whelming majority.[1] What were the essential differences? The plan of Mr. Jenckes was based on the acknowledged principle that it is easier to keep out incompetent servants than to dismiss them when once employed; it aimed to remove the cause of political corruption by doing away with all personal influence, bribery, and political patronage, to restore to the executive department the powers conferred upon it by the Constitution, but which had been usurped by Congress in claiming the privilege of recommending nominations. The Tenure-of-Office bill made no provision for securing capable officers, while it prevented the removal from office of any person without the consent of the Senate. Thus the trouble it was ostensibly designed to cure was immeasurably increased. Before this, the President alone had been held responsible for the removal or non-removal of officials; now, the President could shift the responsibility upon the Senate, and the Senate back upon the President, while the public had no umpire. The system of political "log-rolling," the bane of the service in securing office, was extended to removals, and genuine reform made more difficult than ever. Yet regarded in one light, the passage of the bill was not to be regretted. It has been seen how strong was the pressure in 1789, and again in 1835, in favor of giving the Senate a voice in removing officers. The act of 1867, though it must be considered as a part of the reconstruction policy of Congress, rather than as an attempt to reform the civil service, yet proved more conclusively than all previous arguments had done, the wisdom of the first Congress in denying that power to the Senate. The fallacy of the assertion so often made during the three months' debate, that they were "legislating for the future," was shown five days after President Johnson went out of office, by a vote in the House of 138 to 16 for a total repeal of the act.[2]

The Tenure-of-Office bill was accepted for what it was worth, and after the failure to convict President Johnson on

[1] The bill was introduced into both houses, December 3, 1866, and passed over the veto March 2, 1867.—Senate Journal, 2d session, 39th Cong., p. 6., *Globe*, pp. 5, 1966.

[2] *Globe*, 1st session, 40th Cong., p. 40.

the impeachment trial nothing further was attempted, but all hopes were centred in the incoming administration. At no time since 1829 had there been so much to justify these hopes. President Grant entered upon his duties the unanimous choice of the Republican party, with a large majority of the electoral and popular vote, without political debts to pay, and with a reputation for courage and determination it would have been rash to question; he was understood to be in favor of reform, the principle of the Jenckes bill was growing in popularity, and the better sentiment of the country was anxious to support any measure that would lessen the power of professional politicians.[1] A year later, what had been accomplished? The Secretary of State first appointed had held office three weeks, but had not resigned until he had filled all vacancies in the department with political friends and made removals to accommodate others; of the remaining members of the Cabinet all but two were either indifferent or openly opposed to the reform; the Secretary of the Interior had begun a thorough reform in his department, and had introduced competitive examinations in the Patent Office and the Census Bureau, but in six months was forced to resign, because not protected against the politicians in his efforts; the foreign service was unchanged;[2] political assessments were levied with the most disgraceful effrontery;[3] a few earnest friends of honest ser-

[1] A petition is found, signed by three hundred citizens of Philadelphia, asking their candidates for Congress to support the Jenckes bill or something similar.

[2] See letters of W. B. Stillman, *Nation*, Feb. 18 and June 24, 1869. Also "Adventures of an American Consul Abroad," by Luigi Monti (founded on fact).

[3] Correspondence, Oct. 20–23, 1869, between Hon. J. W. Husted, Secretary of the Republican State (N. Y.) Committee and Gen. F. C. Barlow, U. S. Marshal. The former sent Gen. Barlow a printed circular asking for money to defray election expenses, the blank space being filled in with the words, "$1,000 for yourself and subordinates." The latter replied, enclosing his check for $120, saying that his salary was $6,000, and he understood the assessment was two per cent. on that; he could not impose assessments upon his deputies or collect them. The reply came: "The great discrepancy between the amount of the check and the amount asked for by the committee, would render it, in the opinion of the committee, an act of great injustice to the other government officials who have already responded to the calls made upon them, to accept in

vice were beating the air in their attempts to fix the responsibility *somewhere*, without making a change in the system,[1] while the Jenckes bill again introduced was recommitted to save it from total defeat.[2] The country was amazed, but remembered that the Tenure-of-Office bill had been partially repealed,[3] and trusted the spirit of the President's second annual message, urging the necessity of civil-service reform, not only in the tenure of office, but as to the manner of making appointments so as to relieve the chief executive officers. More dissatisfaction might have been expressed, but the feeling was growing that the executive department was not wholly responsible for the lamentable and unexpected failure; that the real foe was after all not the President, but Congress. All open attempts to pass any measure that would lessen the influence of its members by instituting competitive examinations were persistently voted down or ignored. It was not until March 3, 1871, that the friends of

its present shape your contribution. I, therefore, by order of the Executive Committee, return the check to you, expressing the hope that you will reconsider the views expressed in your communication." The postscript is: "The assessments made upon the government officials in the State are *not* made upon a basis of two per cent. upon their salaries, but upon the ascertained incomes of their respective offices." Gen. Barlow replied, refusing to change his views, and stating that the check for $120 was at the service of the committee if they saw fit to accept it. The letter was returned to the writer without observation, and the check never called for.—*Nation*, Nov. 17, 1870.

[1] Senator Trumbull was specially zealous in advocating a bill introduced by him Dec. 7, 1869, making it a penal offence for members of Congress, directly or indirectly, to solicit or recommend the appointment of any person to office by the President or heads of departments.—*Globe*, 2d sess., 41st Cong., p. 17. Similar bills were frequently introduced, and always voted down or passed over by those who realized that unless a system of examination was introduced, the President must receive information from some source, and all such bills would merely transfer the patronage into the hands of a still more irresponsible class.

[2] *Globe*, 2d sess., 41st Cong., p. 3261.

[3] The House, under the leadership of Gen. Butler, voted at every session for its total repeal, while the Senate as persistently refused to concur. A compromise was agreed upon, by which the President was released from obligation to give reasons to the Senate for the removal of officers, and a person suspended was not reinstated if the Senate did not concur in the suspension by consenting to the appointment of another officer. The act was approved April 5, 1869.—*Globe*, 1st sess., 41st Cong., appendix, p. 37. President Grant advocated in his first message the repeal of all tenure-of-office acts.

reform succeeded in passing a measure in its favor as a rider to the appropriation bill. It gave the President authority to prescribe rules for admission into the civil service, and to appoint persons to conduct inquiries. Mr. Jenckes had drawn up the amendment, Mr Trumbull introduced it into the Senate, and the House adopted it under protest in order to save the appropriation bill. After more than five years of agitation, at least a beginning had been made. The entire responsibility of honestly carrying out the measure rested with the President, and those who had objected to the various Jenckes bills as freeing him from all care in regard to appointments had no cause for complaint. It was several months before the commission was appointed, but the name of George William Curtis at the head gave guarantee that the duties of the board would be faithfully carried out. The third annual message of the President, December, 1871, offered an excuse for the appointment of bad men to office by charging it to the system established by law and custom, and to the fact that many recommended others to office without knowing their character, or without a sense of the grave responsibility incurred. He urged a law making all indorsers of persons for public place accountable for those whom they recommended, and also an appropriation for the support of four American young men in China and also in Japan, in order to add to the efficiency of our diplomatic service there. A special message, two weeks later, transmitted the report of the civil-service commission, and stated that the rules recommended by them would go into effect January 1, 1872, and be faithfully executed by him. The politicians were furious,[1] the reformers jubilant[2]—the reform was fairly under way, even if it had escaped from port under cover of a rider and the expenses of the trip paid in a similar way. An executive order of April 16, 1872, approved the further recommenda-

[1] A subsequent candidate for the Vice-Presidency insisted that it was "the most obnoxious bill of the character which has come before this House."

[2] Mr. Garfield said: "I am exceedingly glad that we are able at last to give for the first time in the history of this government a legislative expression in favor of civil-service reform."—*Globe*, 3d session, 41st Cong., p. 1935.

tions of the commission, announced that political assessments had been forbidden within the various departments, and that "honesty and efficiency, not political activity," would determine the tenure of office, while the Attorney-General upheld the constitutionality of the act.[1] The political managers saw the direction of the wind and tacked accordingly—none were so zealous for reform as they. A large number of the State platforms of 1872, and the national platforms of all parties declared in favor of reform.[2] Never before had there been so many resolutions and bills, for and against, introduced into Congress. The President's fourth annual message again expressed a desire to correct abuses in the civil service, and a hope that the experience of the year under the act of 1871 would enable Congress to reach a satisfactory solution of the question and make the enforcement of the reform binding upon his successors; an executive order of January 17, 1873, prohibited civil officers of the United States from holding State or Territorial office, while the second inaugural reiterated the interest of the President, and assured the nation that the spirit of the rules would be maintained. It was hard to turn from the bright picture thus created to the stern reality. Success in the presidential campaign had cooled the ardor of these reformers for a day,—there was an ominous silence in Congress, and the meagre appropriation of $25,000 a year, voted in 1871, to carry out the act, was discontinued after two years. It was hard to reconcile the earnest protests of the President in favor of the rules with the neglect of their spirit. Early in the spring of 1873 Mr. Curtis had resigned his position as chairman of the commission, as he was led to believe from the manner in which important positions had been filled that the President had abandoned the policy he had advocated, and he was unwilling longer to lend his influence to the commission.[3] Every thing gained seemed lost, and the

[1] Opinions of Attorney-General, v. xiii., pp. 516–525.

[2] McPherson's "Handbook of Politics," 1872.

[3] The occasion was the resignation of Mr. Cornell as surveyor of the port at New York. The gentleman who had been deputy-surveyor for many years was nominated to succeed, but a week later the nomination was withdrawn. The

agitation of nearly ten years must be renewed from the beginning. Hope was kept alive by the appointment of Mr. Dorman B. Eaton to succeed Mr. Curtis, by an occasional appointment like that of Mr. Thomas L. James as postmaster of New York, the extension, by executive order of August 31, 1874, of the civil-service rules to Boston, and the encouraging report of the civil-service commission. But the annual message of the President, December 7, 1874, announced that he could only interpret the failure of Congress to legislate on the subject as a disapproval of the system, and that it would therefore be abandoned.[1] That it had not been wholly unacceptable outside of Congress seems proved by the fact that the attempt made by Mr. Bristow within his own department was almost solely what had given his name a prominent place in the list of presidential nominees in 1876. Let the effect of the failure of ten years be told in the words of one who stood high in office. Said Mr. Hoar, during the trial of Wm. K. Belknap: "My own public life has been a very brief and insignificant one, extending little beyond the duration of a single term of senatorial office. But in that brief period, I have seen five judges of a high court of the United States driven from office by threats of impeachment for corruption or malad-

announcement was made that the appointment would be made under the rules, but instead it was given to the marshal of the district, who was an active politician.—Newspapers of the time.

[1] He says: "The rules adopted to improve the civil service of the government have been adhered to as closely as has been practicable with the opposition with which they meet. The effect, I believe, has been beneficial on the whole, and has tended to the elevation of the service. But it is impracticable to maintain them without direct and positive support of Congress. Generally the support which this reform receives is from those who give it their support only to find fault when the rules are apparently departed from. Removals from office without preferring charges against the parties removed are frequently cited as departures from the rules adopted, and the retention of those against whom charges are made by irresponsible persons, and without good grounds, is also often condemned as a violation of them. Under these circumstances, therefore, I announce that if Congress adjourns without positive legislation on the subject of civil-service reform, I will regard such action as a disapproval of the system, and will abandon it, except so far as to require examinations for certain appointees to determine their fitness. Competitive examinations will be abandoned."

ministration. I have heard the taunt, from friendliest lips, that when the United States presented herself in the East to take part with the civilized world in generous competition in the arts of life, the only product of her institutions in which she surpassed all others beyond question was her corruption. I have seen in the State of the Union foremost in power and wealth, four judges of her courts impeached for corruption, and the political administration of her chief city become a disgrace and a by-word throughout the world. I have seen the Chairman of the Committee on Military Affairs, now a distinguished member of this court, arise in his place and demand the expulsion of four of his associates for making sale of their official privilege of selecting youths to be educated at our great military school. When the greatest railroad of the world * * * was finished, I have seen our national triumph and exultation turned to bitterness and shame by the unanimous report of three committees of Congress * * * that every step of that mighty enterprise had been taken in fraud. I have heard in highest places the shameless doctrine, avowed by men grown old in public office, that the true way by which power should be gained in the Republic is to bribe the people with the offices created for their service, and the true end for which it should be used when gained is the promotion of selfish ambition and the gratification of personal revenge. I have heard that suspicion haunts the footsteps of the trusted companions of the President. These things have passed into history."[1]

Why had the work failed so disastrously? First, there was a popular fallacy that the reform could be brought about by the Executive alone. The rank and file of the party in power were unquestionably in favor of the reform, but they forgot that "eternal vigilance is the price of liberty," and that the duty of bringing it about devolved upon each individual; that the Executive did not constitute the party, but was only a single member of it, and often, in the words of Mr. Lincoln, "had very little influence with the administration." Second, the "middlemen," who were to

[1] *Congressional Record*, vol. iv., pt. 7, p. 63.

strengthen the hands of the Executive and to legislate for the people, were, as a rule, opposed to any and all measures that threatened to take away so large a share of their power. The appointing power had literally been handed over to them, and was not to be surrendered without a death-struggle. The defection in the party ranks in 1872 had warned them that they stood on dangerous ground, but success in the election had only served to tighten their hold upon the spoils, and the mask they had assumed as "reformers" was soon cast aside. Third, the President had in civil life reversed the reputation gained in military career, and become, as regards the reform, a man of words, not of action. While it had been impossible for him to do every thing, and unjust to expect it, it is hard to escape the conviction that more might have been accomplished. A ready excuse for the nepotism and personal favoritism shown in appointments was found in the kindness of heart that prompted them, but it was a surprise that the hero of the war had surrendered so soon to the politicians of the day. It is perhaps going too far to say, as has been done, that his course in abandoning the reform can no more be justified than the surrender of Mr. Webster to the slave power, yet the chapter in President Grant's history which his best friends would be most glad to alter, is entitled "the civil service."

The defeat was not irretrievable, and the opponents of the spoils system marshalled their forces for an attack from a different quarter. Civil-service reform associations were beginning to be formed in various localities, requests were sent to candidates for nomination to Congress to ascertain their views on the subject, leading political clubs adopted resolutions pressing the necessity upon the national nominating conventions,[1] and the prominence of more than one candidate

[1] Notably the Union League Club of New York, composed of twelve hundred members, who represented the highest intelligence of the Republican party in the city. Its resolutions of March, and especially of May, 1876, urged the subject of reform. The Republican Reform Club at the Fifth Avenue Hotel Conference expressed in the strongest possible terms the imperative duty of vigorously carrying forward "such a thorough and systematic reform of the civil service as will bring the several departments of the Federal Government within their

in the conventions of both parties was due to his supposed interest in the movement. Both party platforms contained a civil-service plank ; each nominee declared that if elected he would promote all efforts for reform, and Mr. Hayes in his inaugural urged it " not merely as to certain abuses and practices of so-called official patronage, * * * but a change in the system of appointment itself ; a reform that shall be thorough, radical, and complete; a return to the principles and practices of the founders of the Government." An examination was soon made of the system on which the New York custom-house was conducted, the Secretary of the Interior introduced the system of competitive examinations into his department, an executive order of June 22d prohibited political assessments, and all officers from taking part in the management of political organizations, the foreign posts were filled with unusual credit to the country, and the President's first annual message urged an appropriation to carry out the work of the civil-service commission, which still had a legal existence. But the course of President Hayes in following out his own instructions seemed inconsistent. Honors were conferred upon unknown men and personal friends, as well as upon some who had been foremost in the questionable events connected with the action of the returning boards.[1] The Naval Officer of New York did not resign the position he held, as he should have done under the executive order of June 22d, and months afterward was removed, not on that ground, however, but because the custom-house needed reorganization under new men. The Collector at New York was removed under similar circumstances, but offered the consulate at Paris. There was certainly point to the sarcasm that the President desired every one to be a reformer except himself. But much was certainly accomplished if only in the way of giving encouragement to the movement. In the New York post-office,

true sphere under the Constitution, and restore honor and efficiency to official life." A letter of Mr. Dorman B. Eaton to Hon. J. D. Lawson, a delegate to the Cincinnati Convention, is of interest in the same connection.

[1] *The Nation*, Jan. 1, 1880, has a list of sixteen receiving salaries from $4,500 down.

which, with one or two exceptions, had been controlled by politicians since 1829, and where the frauds had been so proverbial that reform seemed almost out of the question, new measures had been introduced which proved eminently successful,[1] and finally a system of competitive examinations and promotions on merit. The rules were approved by the President and the Postmaster-General and ordered to go into effect May 1, 1879. Copies were sent by desire of the President to all the postmasters and collectors of the principal cities in the Union with a request for their adoption. Letters were subsequently sent to these various officers asking their opinion as to their worth, and the answers received showed that in nearly all cases the rules had been adopted and won the most unqualified approval.[2] The condition of the New York post-office in a measure influences the postal service of the entire country, but not to the same extent as does the custom-house, where a larger business is carried on than at any other port in the world. Duties on merchandise to the amount of $550,000,000 are annually to be estimated, and thirteen schedules of rates enumerate duties on twenty-five hundred different articles. Eight hundred and twenty-three articles pay ad-valorem duty, five hundred and forty-one specific rates, and one hundred and forty-four are subject to compound rates. Those chosen for the successful management of this most intricate business had in general been those who had done most to carry the city or State elections, and their subordinates were removed or appointed for similar reasons,[3] while the Government had paid into the hands of the spoilsmen three times as much as did France for the same amount of service, four times as much as Germany, and five times the amount paid by Great

[1] Very important and conclusive testimony as to the efficiency of these measures is given in a letter to Rev. G. L. Prentiss, written Feb. 23, 1877, by Mr. Theodore Karner, Superintendent of one of the branch stations. So much had been accomplished, that "a return to the former system would hardly be tolerated."

[2] Executive Documents, 2d sess., 46th Cong., No. 8.

[3] During the years 1866–71 removals in the office had been made at the rate of more than one a day.

Britain.[1] If a reform could be accomplished in a place so given over to party managers, nothing was impossible. The attempt was made April 3, 1879, when competitive examinations were introduced, and the good results experienced there as well as at the post-office added the weight of experience to the theoretical arguments of previous years.

The President's message of 1879 was the most important executive communication that had been made with reference to the subject. The good results of the system as far as tried were shown, but the fact was clearly pointed out, as had been repeatedly done for ten years, and proved by experience, that nothing permanent could be accomplished without adequate legislation by Congress and hearty support among the people. Unless the tenure-of-office acts could be repealed, political assessments prohibited by law, the statutes already enacted revised and extended, and sufficient appropriations made, it would be impossible to secure substantial results. Undaunted by lack of appropriations the Civil-Service Commission had been prosecuting their work, and, at the request of President Hayes, Mr. Eaton had made an exhaustive historical study of the civil service of Great Britain. The results were embodied in an elaborate report,[2] transmitted to Congress with the annual message, in which the past and present condition of the service there was most ably presented. Continuing in a more comprehensive manner the work begun by Mr. Jenckes, it showed most emphatically that a civil service corrupted for two hundred years had been so changed that a complete transfer of power from one party to another produced scarcely fifty changes throughout the civil administration. It gave a practical answer to the objections raised against competitive examinations, and did more than any thing had up to this time for the general enlightenment of the country on the fundamental principles of reform.

But party managers, especially those of "the ins," were still unmoved. The Republican platform of 1880 approved

[1] Statistics from D. B. Eaton, Publications of Civil-Service Reform Association, No. 3.

[2] Republished as "Civil Service in Great Britain."

of the reform only by an amendment to the resolutions, and refused to endorse the principle that tenure of office should be made permanent during good behavior.[1] In Congress not a single bill of importance was even introduced until December, 1880, when the Pendleton bill was first presented. President Hayes' administration had therefore left the service unchanged as regards methods of appointment, though the weight of its influence had been cast in favor of reform, the service purified under old legislation, and a strong impetus given to popular education.[2]

President Garfield's letter of acceptance was unsatisfactory in regard to the civil service as was also his inaugural, but it was not necessary to rely upon these for a knowledge of his views. In his first speech in Congress on the subject (March 14, 1870,) he had exposed unflinchingly the main cause of the corruption by saying: "We go man by man to the heads of these departments and say, 'Here is a friend of mine, give him a place.' We press such appointments upon the departments; we crowd the doors; we fill the corridors. Senators and Representatives throng the offices and bureaus until the public business is obstructed; the patience of officers is worn out, and sometimes for fear of losing their places by our influence they at last give way and appoint men not because they are fit for their positions, but because we ask it." His speeches[3] show how repeatedly he had urged Congress to take action, saying that "the one thing absolutely necessary" was that it should "abdicate its usurped and pretended right to dictate appointments to the Chief Executive." (April 19, 1872.) He had had only

[1] McPherson's "Handbook of Politics," 1880.

[2] Remarkable interest was shown in the formation of a society for the publication of civil-service reform pamphlets.—Correspondence columns of the *Nation*, July–December, 1880. Petitions in favor of reform recalled the anti-slavery days. Apparently the ball was set in motion by a petition presented January 24, 1881, from five citizens of New York. It was immediately followed by others, and within a year many had been sent in signed by thousands of names. A single volume of the *Congressional Record* has fifty-six petitions, sent by every class in society and from twenty-two different States, asking for thorough legislation on the subject.—*Record*, vols. xi.–xiii.

[3] Works, vol. i., pp. 499–519.

scorn for those who shielded their opposition to the reform behind the weak defence that it was unconstitutional, that the interests of the party opposed it, and that the service was so good that it was unnecessary. In 1873, when the Committee on Appropriations had failed to insert a section for the payment of the Commission, he had plainly said that many things in the measures introduced had seemed to him trifling and schoolmasterly, yet he implored the House not to throw them "back into the abuses of the past and abandon all hope or purpose of doing any thing better for the future." He had justly complained that all who inveighed against the measures attempted, offered nothing in their stead, and urged the House to support the plan begun as an experiment, unless they wished to abandon all efforts to purify the service. All these utterances of ten years were the best evidence needed of his interest in whatever measure would correct the abuses of the appointing power, or assist the right exercise of it. No man in public life had given such assurances in a position where his sincerity could be so unquestioned, and it was to them, rather than to the conservative expressions of the President-elect, that the public trusted.

It was unfortunate that the condition of the party in power was such that concession to the two factions seemed necessary. The composition of the Cabinet gave evidence of it, but the reform element had a strong representative in the person of Mr. James, the Postmaster-General. It was noteworthy as being the first time a Cabinet position had been conferred as a promotion well earned by important service in the same department. Less was known of the attitude of the other members of the Cabinet, and disappointment was especially felt at the President's choice of a successor to Mr. Schurz, when it was known that he abandoned, without trying it, the plan of competitive examinations that had been so successfully conducted in the Interior Department. There was disappointment also that the President used the weapons of the spoilsmen to deal a crushing blow at the "courtesy of the Senate." Ever since 1789 the weight of

authority had been in favor of giving the President the power of removal, but the vulnerable point in the argument had always been that it could be so used as to remove one person without cause for the sake of giving the place to another. No act of Congress was neccessary to assist the President here, as the exercise of the power of removal was clearly within his own discretion. When now it was used to remove the Collector of New York, against whom not only no objection could be raised, but who had been identified with Mr. James in the work of practical civil-service reform, in order to confer the position upon a political friend, and gratify a member of the Cabinet, it was felt that the act could not be justified. But if the means employed were not the wisest, the end gained was clearly a milestone that marked a return to the theory of the Constitution. The attempt of the New York Senators to demand a voice in the selection of officers within the State, was rebuked by the President and the State Legislature in a way that would seem to make a similar attempt impossible in future. It was fitting that the rebuke should be given by a President who, as a member of Congress, realized more clearly than any previous Executive could have done to what magnitude the evil had grown. President Garfield's short term had brought much encouragement, though disappointment as well. When the circumstances of his death were known, the public drew instantly the only conclusion possible, and the one that history must always find, that it was only a result of that system which placed the Chief Executive of a powerful nation at the mercy of every disappointed beggar for office. It seemed as if the solemn experiences of the summer of 1881 must lead to the reform so earnestly sought by the many who were powerless in the hands of the few to accomplish it. But there were grave apprehensions when it was remembered that President Arthur had, during his public life, been associated most intimately with those whose names were synonymous with the spoils system. These apprehensions were, happily, not realized, and though the appointments made by him were, as a rule, confined to persons who

represented a wing of his own party, or his own geographical locality, yet, in the main, satisfaction was felt with the administration.

It was hard to dislodge the spoilsmen from their stronghold. Public opinion had been unanimous in condemning the action of the New York senators, in seeing in the assassin of the President only a personification of the spoils system, and in censuring the political assessments levied by a national party committee during the summer of 1882. All these things were not without effect, and contributed much to secure the passage of the Pendleton bill, which received the President's signature, January 16, 1883. It was in principle essentially the same as the numerous bills introduced by Mr. Jenckes fifteen years before, and like them was drawn largely with reference to the experience of Great Britain in reforming her civil service. Though a reform measure, it was conservative in character, was applicable to a small number of offices, did not deal with the question of tenure of office, and it was hoped that public sentiment would in time demand its extension to the entire civil service. Those who have hoped most from it believe that its passage marks the beginning of a new era in the history of the appointing power as clearly as did the election of General Jackson in 1829.

VIII.

CONCLUSION.

THREE clearly defined periods are to be noticed in the history of the subject; the first, one of forty years, from 1789 to 1829; second, one of nearly equal length, from 1829 to 1861; third, from the outbreak of the war to the present time. They may be called the merit period, the spoils period, and the reform period. Each has its own sharply-marked characteristics, yet each contains the germ of the special features of the succeeding age. During the first period, the ten administrations were practically one. The executive chair was filled by men of practical statesmanship; their profound and voluminous works on political subjects attest their mastery of the theory of government, while each had a life-long training in the public service. Though each differed widely from the other in personal traits, though they represented political parties far more diverse in policy than those of the present day, though one of these parties had been hopelessly rent by internal dissension and a political revolution had resulted in the complete triumph of the opposite side, though a war had been begun and prosecuted by one party in defiance of the bitter hostility of the other, though questions of the greatest moment concerning domestic policy were discussed with increasing zeal, yet in no case had an Executive sought to promote his own or his party's ends by trading in public office; never was the efficiency of the public service in any way lessened by internal or external political changes and difficulties. Washington had sternly rebuked unjustifiable interference in the nomination of officers;[1] Jefferson had frowned upon nepotism, and his

[1] "Works," x., pp. 399-400, correspondence with Mr. Monroe in regard to the appointment of Alexander Hamilton as Minister to England.

three questions—"Is he honest, is he capable, is he faithful to the Constitution?"—are the corner-stone of good service; Madison believed a misuse of the appointing power a just cause for impeachment; Monroe had not deviated from the course of his predecessors; while John Quincy Adams had been willing to sacrifice a second term by strict adherence to the early policy. Two things, therefore, had combined to render the civil service efficient and keep it free from partisan control: first, the high character of the Executives, which placed them beyond the temptation to abuse their power; second, the fact that offices were few in number, and it was possible for the President to appoint with full knowledge of the character of the one employed. But the skeleton was in the closet, placed there by the political "machine" invented by Aaron Burr and perfected by the followers of William Crawford. It had entered the door, May 15, 1820, clothed in the garb of sanctity and official purity, and though a few had instantly detected the hideous form beneath the fair exterior, its true character had escaped the eye of President Monroe. The Four-Years' Limitation law was ostensibly designed to secure strict accountability on the part of revenue officers; practically it was to render every officer connected with the Treasury Department a devoted servant of Mr. Crawford, its head, in his aspirations for the Presidency. Never, in the whole history of the legislation of a hundred years affecting the appointing power, has so disastrous a measure been enacted. Never, when the spoilsmen had complete control of executive and legislative departments, could they devise an act that would so well serve their purpose. Hitherto it had been necessary for the one appointing to consider only new officers; the new law made it necessary to act every four years upon a large number of inferior officers, for the use to which it could be put soon secured its extension to other departments. But the added cost of time was of small moment compared with the element of corruption introduced. The power of removal had been jealously watched; now a direct exercise of the power seemed almost unnecessary; a name could be dropped from

the list at the expiration of a commission and the vacant place filled at pleasure without incurring the charge of removing an officer. Under color of law, therefore, every appointing officer could traffic in place as suited his purpose, while, on the other hand, all the crowd of anxious, fawning office-seekers were put on the alert, hoping that every turn of the wheel would throw out some one whose place they could fill. Both Mr. Monroe and Mr. Adams executed the law in strict observance of its nominal intent, but the leaven of the spoils period was at work.

The two conditions that had given a pure service for forty years were conspicuously absent during the second period. As regards the Presidency, it became the refuge of "available candidates," "favorite sons," and "heroes of a hundred battles," while the number of offices which had been kept within reasonable limits during the first period was suddenly swollen from fifty-five thousand in 1829 to more than a hundred thousand eight years later, though the population had increased but twenty-four per cent.[1] With the conditions of the early period reversed, it was not surprising that a change in the service came. The system of reward and proscription that had flourished for half a century in New York State politics, was transferred by the fostering hand of President Jackson's Secretary of State to the Federal Government, where it found congenial soil. Those high in authority explained, "The government must be administered by its friends;" Senator Marcy threw off the mask and cried, "To the victors belong the spoils!" while the people translated the thought of the politicians into the vernacular, "Uncle Sam is rich enough to buy us all a farm." Government service was literally regarded as a legitimate field for plunder and the executive departments were admirably adapted for it. The departments of War, the Navy, and Justice afforded less opportunity for the spoilsmen, but those of State, the Treasury, the Interior, and the Post-office were attractive places.

In the Department of State certain qualifications had

[1] Mr. G. W. Curtis, in *Unitarian Review*, Nov. 1878.

been considered essential in its subordinate officers, that the dignity of the Government might be maintained abroad; a knowledge of French was indispensable, and every additional language was of assistance, an acquaintance with general European history, especially with its diplomatic history, and an address that evidenced high birth or position in society. John Quincy Adams and Albert Gallatin had been the typical diplomatists of the early period. During the spoils period, a person who had aspired to a seat in the Cabinet, or been unsuccessful in the race for Congress, was consoled for his defeat with a consulship or diplomatic post, and thus his allegiance to the party preserved. It had been said in Rome, by a leading patrician, that he desired a proconsulship for three years, the first that he might pay the debts contracted in obtaining the office, the second that he might lay up sufficient means to maintain himself at ease for the rest of his life, and a third year to secure enough to bribe the judges on his return. During the spoils period the opportunity to make a similar use of office was at least presented, when a consul found himself expected to maintain, on a salary of fifteen hundred dollars, the same social state as his predecessor, who had spent fifty thousand dollars a year of his private fortune. "Economy" and "retrenchment" were the cries that had caught the popular ear, but a false economy too often resulted in the degradation of the service, and led to difficulties that increased the demands upon the Treasury. The attempt made at the close of the period by Secretary Marcy to undo in the department what was, in a measure, the result of his own work, was in every way a worthy one, and it is to be regretted that the plan has not been permanently established. The ordinary professions and business occupations recognize the necessity of training and are willing to pay for it according to its worth. The spoils period made the foreign service a trade that any man could take up as a pastime, and while legitimate compensation was kept at the lowest possible rate, it could attract few persons having natural ability for the work. Through the consular service, opportunities are con-

stantly presented for benefiting the commercial interests of the United States, and it is unpleasant to reflect how many avenues of trade now closed might have been opened had we had for thirty years the trained and experienced consular clerks once suggested.

The Treasury Department had doubtless afforded the best opportunity for its officials "to make the most of their time," to use the current phrase. How well some of them improved it, the names of Swartwout and Hoyt suggest. It seemed the peculiar irony of fate that the most notorious defalcations in official history should come to light during the administration of President Van Buren, who had done so much to spread the political methods of New York, and had apparently made no attempt to undo the evil. There would seem to be no reason for exempting the Treasury officials from the ordinary qualifications of business men; yet the spoilsmen saw no inconsistency in appointing a farmer an appraiser of silks, or a tradesman an inspector of ships, or a teacher collector at an important port. When the "irregularities" of the collector at New York amounted to a million and a half, it was not surprising that the infection spread through the lower ranks, until men were ready to offer five thousand dollars for the influence that would secure a position in the revenue service where fifteen hundred dollars was all that could be legitimately earned in a year, and a change in administration would probably bring removal within twelve months.[1]

If the Treasury Department offered the most opportunities to party managers, some of the bureaus of the Interior Department were no less inviting. The Indian agencies in particular, remote from official centres, and practically irresponsible, were eagerly sought by frontier men who had been successful politicians. Just how success in that field promised success in arranging Indian complications and avoiding conflicts between the settlers and the various tribes was never explained. The result of making such appointments, solely from political considerations, has been seen in the

[1] *N. A. Rev.*, Jan., 1871.

hostility of the Indians toward the Government, and too often every white man has seemed to them a means of fraud and oppression. Even difficulties that originated elsewhere were constantly aggravated by the conduct of persons who were nominally Government employés, but in reality party servants.

The Post-office Department had been established without political considerations, and kept free from partisan control. But President Jackson's administration had seized it as a powerful weapon to be used in their interests. Every one of the five hundred postmasters removed by him had been succeeded by a politician, only too ready to be the centre of a political clique. When the Four-Years' Limitation law had been extended to postmasters, the importance of the enormous patronage thrown into the hands of the Postmaster-General was recognized, and wholly on that ground he was invited to a seat in the cabinet. Though the disadvantage of frequent change was felt in this department more than elsewhere, corruption on the part of officials was comparatively rare, though the possibilities presented in some localities the recent Star-route frauds attest. It is difficult to say whether the frequent attempts in Congress to make the office of postmaster an elective one arose from a desire to make it still more political in character, or seemed a means of lessening party control.

There was scarcely an Executive during the period who did not place himself on record as favoring such use of the power as would secure a pure and efficient service, but in practice nearly all cast in their lot with the spoilsmen. General Jackson opened the door to them, Mr. Van Buren was hand in glove with them, and Mr. Tyler attempted to build up a new party through their help. Neither General Harrison nor General Taylor had been able to withstand their influence, while Mr. Polk and his successors adopted their policy without disguise. Congress at first protested, but proposed nothing that would not have increased the evil, and the majority soon went over to the other side, and openly avowed the spoils principle. It was far easier to let down

the bars than to put them up again. The Federal Government had been taught the lesson by a State; it in turn became the teacher of others until rotation was almost unconsciously adopted as the fixed policy, not only of every State but of the cities and towns of all sections. In a generation that prided itself upon its "practical" ways, the logical effects passed unnoticed. No man refused to accept his morning mail from a postman who did not agree with him in regard to internal improvements made at government expense, nor did he welcome the tax-gatherer more cordially because a believer in his favorite hobby of free trade, nor think twice before sending for a fire company, every member of which disagreed with him in regard to a national bank, nor hesitate to summon a policeman who was a Know-Nothing, though himself a bitter enemy of the organization. No one organized a raid on the business of a successful grocer, on the plea that he had enjoyed the emoluments of trade long enough, and that some one else needed the store. No company of "workers" demanded that a leading banker should dismiss a teller of ten years' experience in order to employ a person who had voted the straight ticket. No railroad president was urged to dismiss a hundred conductors and employ instead a disbanded company of Mexican soldiers. No proprietor of the Fifth Avenue Hotel was threatened with loss of patronage in case he refused to discharge his waiters in favor of one-armed soldiers whose terms had expired. No man was recommended as a college president because he had been successful as an internal-revenue inspector. Yet practically the same absurdities were committed day after day in local, State, and Government service. Not only was allegiance to the party in power made the paramount qualification for the ordinary executive positions, but the care of the insane, the blind, the deaf and dumb, the feeble-minded, of all free educational and charitable institutions, was made to turn upon the same faithfulness to party. The very word "patronage," which almost came into use during the period, carried with it the old Roman idea of the claim which a patron had over those whom he had freed.

The change of terms from "the appointing power" of the early period to "executive patronage" of the second, was significant if unconscious. The claim was easily maintained by threat of dismissal, or by political assessments, but though the yoke of the patron was galling complaints were silenced.

But as the Four-Years' Limitation law foretold in clear weather the coming storm, so in the darkness of the spoils period there were glimpses of coming day. Mr. Calhoun's patronage bill, in 1835, which provided for the repeal of the act of 1820, had been carried in the Senate, though not brought to vote in the House; Mr. Webster, as Secretary of State in 1841, had attempted to prevent such abuse of patronage as interfered with the freedom of elections, while pass-examinations had been established, and a plan laid for consular pupils. Expression, too, had been given in a crude form to the idea that the service had outgrown the President's power of control. As early as 1838 the Legislature of Connecticut had sent a resolution to Congress asking for an amendment to the Constitution providing that the power of nominating, appointing, and removing all officers of the United States, except those of the army and navy and ambassadors, public ministers, and consuls, should be taken from the President, and exercised in some other way.[1] The spoilsmen had in no way been shorn of their power, but the germs of reform were there.

The period from 1861 has been spoken of as one of reform, yet many of the worst features of the spoils period have found their culmination here, and new difficulties been presented. The war enormously increased the number of offices, and at its close the spoilsmen, under the guise of "the soldier's friends," demanded all offices for those who had been connected with it. The influence of members of Congress in securing positions for their constituents became so great that instances were known where members kept a debt and credit account with heads of departments. Masquerading as the "courtesy of the Senate," it formed one of the most conspicuous instances of the imperceptible way in

[1] Senate Docs. 2d sess., 25th Cong., vol. vi., No. 489.

which the Constitution has been amended. The Convention at Philadelphia, which had so carefully separated the legislative and executive departments, would not have recognized the work of their own hand in the claim that culminated in the Conkling episode of 1881. Every President after 1869 reiterated his desire so to use the appointing power as to give satisfaction to the public, but each signally failed. Not only had individual members of Congress thwarted all efforts at reform by claiming unconstitutional privileges, but Congress as a body persistently refused to give relief. The great change in circumstances since 1789 had not been met by corresponding change in legislation. The child's dress was not only too small for the grown man, but even when cut after a larger pattern gave only a grotesque appearance. A change of terms again gave tacit acknowledgment of the change in situation—legislation was no longer proposed affecting "the appointing power," or "executive patronage," but "reform in the civil service." If the President apparently could not act, Congress would not. For nearly twenty years, a few disinterested members brought every influence at their command to bear upon the reform. Their plans were scoffed at as "impracticable," "unbusiness like," "unconstitutional," "undemocratic," and it was boldly asserted that no party could succeed without subsidizing its adherents. The majority were willing to dabble in reformatory measures just enough to throw the public off its guard. Patience was at last exhausted. The spoilsmen, like the pro-slavery advocates, had cried "Peace, peace, when there was no peace." As the Dred Scott case had aroused the North from their torpor by opening their eyes to what was only the natural result of all their legislation in behalf of slavery interests, so the Conkling case and the assassination of President Garfield showed that the battle for reform must be fought at once and with new weapons. Reform associations, tracts and various publications, petitions to Congress, all showed how thoroughly the intelligent classes were aroused. When the reform was a foregone conclusion, each party claimed the honor of originating it as,

> "Seven wealthy cities claimed great Homer dead,
> Through which the living Homer begged his bread."

Individual leaders became as anxious to reconcile their previous position with the successful reform as have been others their prophecies of the destruction of the Union with the happy termination of the war. The partial reform, therefore, has been the result of twenty years' agitation, brought about in spite of party organizers and intended, not to usurp in any way executive power, but by appropriate legislation to supplement the power conferred by the Constitution as the first Congress supplemented it in 1789.

Though the period has indeed been one of reform, though a practical civil-service bill has been passed, political assessments partially done away, and a temporary check given to the "courtesy of the Senate," yet after all it has been but an entering wedge. The Four-Years' Limitation law is still on the statute-books; the Pendleton bill applies to only one seventh of our civil officers and can be broken in spirit if not in letter; our consular service is still a refuge for those who desire to travel abroad at Government expense; foreign courts have rebuked our diplomatic system by refusing to accept representatives appointed for other reasons than that of fitness for place; "offensive partisanship," when other pretexts fail, can be made to cover a multitude of removals; in our State and local administrations scarcely an attempt at reform has been made.

A fourth period in the history of the appointing power is to come—a *reformed* period; when the chief Executive can boast like the great Premier that his sole patronage is the appointment of his private secretary; when every legislator can say, with a leading member of the House of Commons, that he is without power to influence in the smallest degree the appointment of a custom-house officer or an exciseman; when both Executive and Congress, freed from their duties of dispensing office, can turn their attention to more important questions of state; when our civil service will be in reality, and not in the idle jest of a politician, "the best in the world."

APPENDIX.

The following table is a partial list of proposed measures bearing upon the appointing power. The date of introduction, place, author, and final result are given, and also in the case of extended discussion the principal supporters and opponents. The list does not include all propositions to make members of Congress ineligible to appointment, nor all of those to secure general election of officers by popular vote. It is continued to the date of the Pendleton bill.

1789. May 19th, House. Bill establishing the Department of Foreign Affairs. Debate on the power of the President alone to remove officers. Supported by Madison, Ames, Vining, Sedgwick, Benson, Scott ; opposed by White, Gerry, Bland, Livermore, Page, Stone. Carried, June 24th. Yeas 29, nays 22. Discussed in the Senate July 14th. Carried, July 18th, by the casting vote of the Vice-President.

1806. February 24th, House, John Randolph. Proposed amendment making judges of the United States' Courts removable on the joint address of both Houses of Congress. After a short debate, postponed indefinitely.

February 26th, House, John Randolph. Resolution to prevent any officer of the army or navy from holding any United States civil office. Carried, April 2d, 94 to 21.

1808. April 12th, Senate, Hillhouse. Proposed amendments giving the House a voice in appointing and removing. Not acted upon.

1809. January 25th, House, Josiah Quincy. Resolutions of inquiry in regard to the Boston collectorship, the ultimate object being the impeachment of President Jefferson. Lost, 1 to 117.

1810. December 20th, House, Macon. Amendment making members of Congress ineligible to office. Rejected, February 8, 1811. Yeas 59, nays 61.

1813. June 14th, Senate. Action in regard to Mr. Gallatin. Resolution of Mr. Anderson declaring that the duties of Secretary of the Treasury and Envoy Extraordinary were incompatible and ought not to be united. Carried, 20 to 14.

1820. April 15th, House, Cobb. Amendment making members of Congress ineligible to appointment. Lost, 72 to 87.

April 20th, Senate, Dickerson. Bill to secure the appointment for a limited period of collectors, naval officers, and surveyors of the customs. Known as the Four-Years' Limitation Law. Carried without debate, May 5th, 29 to 4. Passed by the House without debate and approved May 15th. Subsequently extended

to the office of district-attorney, territorial justice, surveyor-general, register of land-office, receiver of public moneys, and postmasters of fourth and fifth class.

1825. December 19th, Senate, Cobb. Resolution providing for the ineligibility of members. Bill reported by Mr. Benton, March 1, 1826. Tabled, May 10th.

1826. March 30th, Senate, Branch. Resolution protesting against the competency of the President to appoint ministers to the Panama Congress without advice of the Senate. Tabled, April 27th, 23 to 21.

May 4th, Senate, Benton. Report on Executive patronage, with two bills to secure faithful officers in their positions and to displace defaulters. Tabled at the request of Mr. Macon, May 12th.

1830. March 1st, Senate. Speech of Senator Grundy on Foot's Resolution. In favor of President Jackson's removals.

March 4th, Senate. Clayton on Foot's Resolution. Opposed to removals of the President.

March 15th, Senate. Livingston on Foot's Resolution. In favor of the President's course.

March 17th, Senate, Barton. Speech in secret session opposed to Executive power of removal.

March 17th, Senate, Marks. Speech in secret session asking reasons for removal of a certain officer.

April 21st, Senate, Barton. Resolution asking the President for reasons for removal of a certain officer. Tabled.

April 26th, Senate, Barton. Resolution asking reasons for removal of an officer. Tabled, 22 to 15.

April 28th, Senate, Holmes. Resolution protesting against the course of the President and asking him to give reasons for all removals made during the recess of the Senate. On motion of Mr. Grundy indefinitely postponed, 24 to 21.

1832. January 26th, Senate, Ewing. Resolutions against the removal of officers without sufficient cause. Not discussed.

December 20th, House, Wickliffe. Amendment making members of Congress ineligible to office. Postponed.

December 21st, House, Wickliffe. Resolution asking for list of members of Congress appointed to office after April, 1826. Carried, December 26th, 102 to 74.

1834. March 7th, Senate, Clay. Resolutions in favor of removal of officers only by consent of the Senate. At the time appointed for their discussion, the debate on the presidential protest was in progress and they were never taken up.

1835. February 9th, Senate, Calhoun. Executive patronage bill, one article providing for the repeal of the Four-Years' limitation law. Supported by Calhoun, Clay, Webster, Ewing, and others; opposed by Grundy, Buchanan, Wright, Tallmadge, and others. Carried in the Senate, February 21st, 31 to 16. Introduced again in the Senate, December 29th, and carried February 3, 1836, 23 to 20. Taken up by the House, February 3d; referred to Committee of the Whole, February 25th; never brought to a final vote.

1838. February 19th, House, Patton. Resolutions providing for inquiry as

to the number of officers removed without cause and for bill to limit Executive patronage. Tabled.

December 21st, Senate, Crittenden. Bill to prevent interference of public officers in elections. Lost, February 27, 1839, 5 to 28.

1839. February 12th, Senate, Tallmadge. Resolution asking for names of deputy postmasters removed after March 4, 1837. Adopted.

March 2d, House, Mercer. Resolution asking for list of all officers removed after March, 1789, and number not renominated under the Four-Years' Limitation law. Adopted.

1840. February 10th, House, Bell. Bill to repeal the Four-Years' Limitation law. Referred to Committee of the Whole and not debated.

1841. June 17th, Senate, Buchanan. Resolution asking for names of officers removed after March 4, 1841. Amended so as to include all officers removed after March 4, 1829, Carried, July 10th.

July 1st, Senate, Benton. Resolutions asking reasons for removal of certain persons named therein. Not acted upon.

December 29th, Senate, Clay. Amendment providing for ineligibility of members of Congress to civil office. Not voted upon.

1842. March 21st, House, Andrews. Resolution asking for names of members of Congress who had applied for office. Adopted.

1843. January 9th, House, Botts. Resolutions having in view the impeachment of President Tyler for misuse of the appointing power. Lost, 83 to 127.

1844. January 3d, House, Thomasson. Resolution in favor of providing by law that all removals should have the reasons thereof assigned. No action.

December 17th, House, Grider. Resolution asking for a bill to regulate the power of removal.

1845. December 19th, House, Woodworth. Resolution asking for a bill providing for the appointment of officers in proportion to the population and limiting the term to four years. Adopted.

December 31st, House, Rathbun. Bill reported in accordance with the resolution of December 19th. Desultory discussion, June 10, 1846. Not brought to vote.

1846. January 13th, House, Andrew Johnson. Resolutions to secure rotation in office. Not acted upon.

December 16th, House, Benton. Notice of bill to regulate the appointment of officers and guard the public service from improper influence. Not acted upon.

1848. December 12th, House, Wentworth. Resolution asking for a bill to secure the election of all officers directly by the people. Bill not presented.

1849. December 24th, Senate, Bradbury. Resolution asking that the Senate be informed of all charges preferred against officers removed after March 4, 1849. Final vote was to have been taken July 10, 1850, but the death of President Taylor prevented. Introduced again, with some modifications, December 12, 1850. Partisan debate maintained in favor of the resolution by Senators Bradbury, Douglas, Bright, Cass, Hale, Downs, and others; on the negative by Senators Smith, Mangum, Bell, Webster, Underwood, and others. Not voted upon.

1850. January 3d, Senate, Dickinson. Resolutions asking in regard to removal of postmasters and reasons for appointments made. Adopted, March 4th.

January 9th, Senate, Seward. Bill to prevent sale and farming out of offices. Not brought to vote.

1853. February 28th, Senate, Hunter. Amendment offered to the civil appropriation bill providing for the classification of clerks in all the departments except those of State and Justice and for admission to these classes only after examination. Carried in both Houses and approved March 2d.

1856. August 18th, Senate. Act to regulate the diplomatic and consular service. Section 7, inserted while the bill was before the Committee, provided for twenty-five consular pupils. December 30, 1856, in the House, Mr. Haven moved to strike out the above section and it was carried, ayes 90, no further count being taken.

1864. April 30th, Senate, Sumner. Bill to secure greater efficiency in the civil service by providing for competitive examinations. Printed and laid on the table.

June 20th, Senate. Amendment to consular and diplomatic appropriation bill providing for twenty-five consular pupils. The House non-concurred in the amendment. The conference committee agreed upon thirteen consular clerks, and the amendment was passed with the bill.

1865. December 20th, House, Jenckes. Bill to regulate the civil service by providing for competitive examinations. Referred to Committee on the Judiciary, then to select committee, and not reported until June 13, 1866. Committee continued during the second session of Congress and bill presented January 29, 1867.

1866. June 28th, Senate, B. Gratz Brown. Resolution asking for a bill reorganizing the civil service so as to secure appointment after examination, promotion on merit, and dismissal only for cause. Adopted.

December 3d, Senate, Williams; House, Stevens. Tenure-of-office bill, providing for the removal of officers only with the consent of the Senate. Supported in the Senate by Senators Williams, Edmunds, Sumner, Sherman, Wade, Howe, Morrill, Wilson, and others; opposed by Senators Buckalew, Cowan, Johnson, Doolittle, Hendricks, and others. After several amendments, passed by the Senate, January 18, 1867, 29 to 9. In the House the bill was supported by Representatives Thayer, Kasson, Blaine, Garfield, Hayes, Jenckes, Conkling, Schenck, and others. The opposition was not strong and was conducted mainly by Mr. Hise. Passed by the House, February 2, 1867, 111 to 38. Vetoed by the President on the ground that it was unconstitutional. Passed over the veto, March 2, 1867, in the Senate, 35 to 11; in the House, 133 to 37.

1867. January 29th, House. Bill presented which was a modification of the one introduced by Mr. Jenckes, December 20, 1865. Tabled, February 6th, 72 to 66.

1868. May 14th, House, Jenckes. Bill similar to that of Dec. 20, 1865. Advocated by author of the bill. House adjourned without action.

July 2d. Senate, Patterson. Bill to provide for greater efficiency in the diplomatic and consular service. Not acted upon.

1869. Jan. 11th, House, Washburn. Bill to repeal tenure-of-office act. Passed the House, 121 to 47. Offered in the Senate by Senator Morton as an amendment to the appropriation bill. Defeated March 2d, 22 to 26.

Jan. 26th, Senate, Sherman. Resolution inquiring into the expediency of reorganizing the civil service so as to secure greater efficiency and economy. Adopted and concurred in by the House. Rescinded by Senate, March 15th.

March 10th, House, Butler. Bill to repeal the tenure-of-office act. Carried, 138 to 16. In the Senate, various amendments proposed which the House refused to accept. A conference committee was appointed and a bill prepared which substantially repealed the tenure-of-office bill. Adopted by the Senate, 42 to 8 ; by the House, 108 to 67. Approved April 5th.

April 5th, House, Jenckes. Bill to provide for competitive examinations in the civil service, introduced a third time. Referred to committee and not discussed.

Dec. 7th, Senate, Trumbull. Bill to relieve members of Congress from importunity by office-seekers and to preserve the independence of the departments of government. Reported with amendments, discussed at length, but finally passed over.

Dec. 20th, Senate, Schurz. Bill to secure greater efficiency in the civil service. Partially the same as the Jenckes bills, but included all classes of civil officers. Passed over.

1870. May 3d, House, Jenckes. Fourth attempt to pass a civil-service-reform bill. Supported almost alone by Mr. Jenckes. Opposed by Representatives Peters, Maynard, Bingham, and Niblack. Recommitted.

Dec. 12th, House, B. F. Butler. Motion to repeal the tenure-of-office bill, and the amendment to it of April 5, 1869. Carried in the House, 159 to 25. Indefinitely postponed in the Senate.

1871. Jan. 4th, House, Coburn. Amendment to the Constitution proposed providing for the election by the State or district of all United States officers, except certain judicial officers. Referred.

Jan. 4th, Senate. Rediscussion of Senator Trumbull's bill of Dec. 7, 1869. Opposed by civil-service reformers who proposed as an amendment a distinctively civil-service-reform bill. Passed over.

January 9th, House, Jenckes. Fifth attempt to pass the Jenckes bill. Referred to committee and not discussed.

January 30th, House, Armstrong. Resolution giving the President authority to prescribe rules for admission into the civil service, and to appoint persons to conduct inquiries. Referred to committee and afterward passed, March 3d, as an amendment to the appropriation bill.

March 3d, Senate, Trumbull. Resolution of January 30th proposed as a rider to the appropriation bill. Adopted without discussion, 32 to 24. Strongly opposed in the House, especially by Mr. Logan, but finally concurred in, 90 to 20.

December 4th, Senate, Edmunds. The bill drawn up by Mr. Jenckes introduced, but not acted upon.

December 18th, House, Stevenson. Bill making it a penal offence for any member of Congress to recommend to office any person known to be dishonest or incompetent. Referred and not acted upon.

1872. January 8th, House, Willard. Bill making it unlawful for a member of Congress to solicit office for any one from the President or heads of departments. Discussed at length and recommitted, April 19th, 97 to 79.

January 8th, House, Upson. Resolution asking for a bill to provide for the admission into the civil service of persons from each state according to the population. Adopted.

January 8th, House, McCrary. Proposed amendment to the Constitution, providing for fixing the term of office at four years, the election of postmasters and other officers whose duties are within the State, by the people of the State, or part of State, and for removal by the President, except for political or religious reasons. Referred to committee and not acted upon.

January 10th, Senate, Carpenter. Resolution stating that any law designed to relieve the President or heads of departments of the full responsibility of making appointments was unconstitutional. Discussed at length by those who desired an opportunity to express their opposition to the act of March 3, 1871. Not voted upon.

January 17th, House, Snapp. Resolution adverse to the report of the civil-service commission. Discussed but no action taken.

January 24th, Senate, Frelinghuysen. Bill making appropriation to enable the President to put in force the rules regulating the civil-service. Reported adversely and indefinitely postponed.

February 12th, House, Perry. Resolution to prohibit members of Congress from soliciting office. Referred and no action taken.

May 8th. Senator Frelinghuysen's bill of January 24th passed as an amendment to the civil appropriation bill. $25,000 appropriated.

May 14th, House, B. F. Butler. Bill to repeal all tenure-of-office bills. Passed by the House without a division ; referred in the Senate.

1874. Jan. 19th, House, Smart. Bill to improve the civil service. Referred.

Feb. 2d, House, B. F. Butler. Resolution giving preference on civil-service examinations to disabled soldiers or their relatives. Carried unanimously. Passed in the Senate, Feb. 20th, 36 to 8.

April 1st, House, Smith. Bill to improve the civil service. Referred

June 11th, House, Kellogg. Amendment to the appropriation bill giving $25,000 to carry out the act of March 3, 1871. Rejected, 48 to 108.

June 13th, House, Kasson. Amendment to the civil-appropriation bill repealing the Act of March 3, 1871, and one providing that the relatives of soldiers and sailors be given the preference in all civil appointments, that appointments be made as nearly as possible from the Congressional districts, and that when removals occur the reasons for removals be made on the records. Passed by the House, 74 in favor, noes not counted. The Senate amended by voting $15,000 for the civil-service commission. The House non-concurred, and after a conference committee both amendments were dropped. This left the act of March 3, 1871, on the statute-books, but no further appropriations were made to carry it out.

1876. Jan. 24th, House, A. S. Williams. Amendment to the Constitution providing for a civil-service commission who should have absolute advisory and

confirmatory powers in appointing and removing officers, and providing for the election of certain officers by the localities where they were to serve, these officers to be removed by the commission, but not for political or religious reasons. Referred.

June 5th, Senate, Clayton. Amendment to the appropriation bill providing that appointments be apportioned among the States and territories according to population. Mr. Edmunds offered as an amendment that such appointments be made after competitive examination. Rejected, 11 to 28. Original amendment of Mr. Clayton rejected, 22 to 23. Renewed and tabled, 21 to 18.

Aug. 12th. Bill to prevent political assessments. Inserted as a rider to the appropriation bill by the Committee on Conference, and agreed to by both Houses without a division.

1880. Dec. 15th, Senate, Pendleton. Bill to regulate the civil service and promote its efficiency by providing for competitive examinations. Referred.

Dec. 15th, Senate, Pendleton. Bill to prohibit political assessments. Referred.

1881. Jan. 10th, House, Carpenter. Amendment to the Constitution providing that officers hold their positions for four years, and giving Congress the privilege of providing for the election of inferior officers directly by the people. Referred.

Dec. 6th, Senate, Pendleton. Bill to provide for appointments after competitive examinations. Referred and reported, but not voted upon.

Dec. 6th, Senate, Pendleton. Bill to prevent political assessments. Referred. Subsequently became part of the bill approved Jan. 16, 1883.

Dec. 13th, Senate, Voorhees. Proposed amendment giving the election of officers directly to the people. Referred.

December 13th, House, Carpenter. Amendment of January 10, 1881, repeated and referred.

December 13th, House, Sherwin. Amendment providing for the election of postmasters by the people and for their removal by the President, except for political or religious reasons. Referred.

December 13th, House, Willis. Bill to prevent political assessments. Referred.

1882. January 18th, Senate, George. Amendment providing for the election of a greater number of officers by the people for a term of four years. No action taken.

January 23d, House, Geddes. Amendment providing for the appointment of all officers, except heads of departments, by a commission of three, who should also have the power of removal, the Senate having the power of confirmation. Referred.

March 21st, Senate, Pendleton. Amendment providing for the election of postmasters, marshals, and certain other inferior officers directly by the people. Referred.

June 6th, Senate, Slater. Bill to prevent political assessments. Referred.

December 4th, House, Herbert. Bill to prevent political assessments. Referred.

December 27th, Senate. The Pendleton bill passed by a vote of 38 to 5.

Supported by all the Republicans and all the Democrats except five. Passed by the House January 4, 1883, 155 to 47. Supported by 102 Republicans, 49 Democrats, and 4 Nationals. Opposed by 39 Democrats, 7 Republicans, and 1 National. Approved by the President, January 16, 1883.

December 28th, Senate. Bill passed to prevent political assessments. Tabled in the House because incorporated in the Pendleton bill.

1883. January 9th, Senate, Hawley. Bill to prevent political assessments. Incorporated into the Pendleton bill.

January 15th, House, Gibson. Bill to repeal the act of May 15, 1820. Referred.

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THE END.

REPORT OF THE PROCEEDINGS

OF THE

AMERICAN HISTORICAL ASSOCIATION

SECOND ANNUAL MEETING, SARATOGA, SEPTEMBER 8–10, 1885.

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SECOND ANNUAL MEETING

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BY

HERBERT B. ADAMS

Secretary of the Association

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SECRETARY'S REPORT

OF THE

PROCEEDINGS AT THE SECOND ANNUAL MEETING.

SARATOGA, SEPTEMBER 8–10, 1885.

THE American Historical Association, which was organized at Saratoga, September 10, 1884, with forty members, for "the promotion of historical studies," increased its membership by election during the ensuing year to the number of two hundred and eighty-seven, including forty-three life members. Notices of the second annual meeting at Saratoga were issued by the Secretary in the month of August, 1885, to the entire Association. There assembled at Saratoga over fifty members, representing not only various parts of the country, but many different institutions of learning and several historical societies. Among the persons present were Goldwin Smith, of Toronto, Ontario; President Andrew D. White, Professors Moses Coit Tyler and Herbert Tuttle, from Cornell University; Justin Winsor, librarian of Harvard University, and Professors Gurney and Emerton, with Drs. Royce and Channing, from the same institution; Professor E. B. Andrews, of Brown University; Professor John B. Clark, of Smith College, Northampton, Mass.; Professor Katherine Coman, of Wellesley College; Professor Charles Kendall Adams and Henry Carter Adams, from the

University of Michigan; Professor Alexander Johnston, of Princeton College; Professor E. J. James, of the University of Pennsylvania; Professor James A. Harrison, of Washington and Lee University, Lexington, Va.; and Drs. Ely, Jameson, and Adams, with Messrs. Levermore and Dewey, from the Johns Hopkins University. Besides these representatives of various sections and various historical schools, there were also eminent specialists in history, notably Henry Adams and Eugene Schuyler, of Washington, D. C.; there were Major-General Cullum, formerly commandant of the Military Academy at West Point; Judge Campbell, of Detroit, Mich.; Hon. Rufus King, of Cincinnati; Ex-President Hayes, of Fremont, Ohio; Dr. M. M. Bagg, Secretary of the Oneida Historical Society; Nathaniel Paine, Esq., of the American Antiquarian Society; William B. Weeden, Esq., of the Rhode Island Historical Society; Charles Deane, LL.D., of the Massachusetts Historical Society; Martha J. Lamb, Editor of *The Magazine of American History*, and William A. Mowry, editor of *Education*.

The presence of many American librarians at Saratoga, notwithstanding the attractions of their annual conference at Lake George, is also noteworthy. Among them were the following members of the American Historical Association: Samuel S. Green, of the Worcester Free Public Library; Edmund Barton, librarian of the American Antiquarian Society; William E. Foster, of the Providence Public Library; J. N. Larned, Young Men's Library, Buffalo, N. Y.; William F. Poole, of the Chicago Public Library; Judge Mellen Chamberlain, of the Boston Public Library.

The American Social Science Association was holding its annual meeting at Saratoga at the very same hours as the Historical Association, and while each body undoubtedly interfered with the attractions of the other, nevertheless the historical convention profited in attendance and interest by reason of appreciative rivals. As in the case of the librarians' conference, some members of the Social Science Association were also members of the Historical Association. Of this class the following gentlemen were most frequently

seen at the historical meetings: Hon. Frederick J. Kingsbury, of Waterbury, Conn., and William T. Harris, LL.D., of Concord, Mass.

THE AMERICAN ECONOMIC ASSOCIATION.

The organization of the American Economic Association, under the same roof with and in the reading-rooms of the American Historical Association, at hours not conflicting with the latter's appointments, and by historical members who came to Saratoga to found an Historical School of Economics, was perhaps the most notable event in the record of all these conventions, although, at the time, it attracted perhaps the least attention, except among the few persons who were interested. This new organization, which is now developing almost, if not quite, as rapidly as the American Historical Association, sprang into life under the shelter of this latter body precisely as this sprang up one year before under the shelter of the Social-Science Association. In each case, however, there were new and fruitful germs implanted in social ground already prepared. The gathering of men of kindred interests at Saratoga, under favorable auspices, although with decidedly complex motives and widely-varying opinions, gave rise in each case, after a suggestive debate, to a simple and sharply-defined purpose. Among the members of the American Historical Association who gave an historical spirit to the new Economic Association and who are now on its board of officers, are Francis A. Walker, of the Massachusetts Institute of Technology, the President; Professors Henry Carter Adams, of the University of Michigan, John B. Clark, of Smith College, Northampton, Massachusetts, Edmund J. James, of the University of Pennsylvania, the three Vice-Presidents; Dr. Richard T. Ely, of Johns Hopkins University, the Secretary; and Dr. E. R. A. Seligman, of Columbia College, the Treasurer. In the Council of the Economic Association are the following historical members: President C. K. Adams, Cornell University; Professor Alexander Johnston, of Princeton College; Professor E. B. Andrews,

of Brown University; Professor Woodrow Wilson, Bryn Mawr, Pa.; Professor George Knight, State University, Columbus, Ohio; Davis R. Dewey, Fellow in History, Johns Hopkins University; Professor Katherine Coman, Wellesley College; Hon. Carroll D. Wright, Commissioner, U. S. Bureau of Labor Statistics; Professor James H. Canfield, University of Kansas, Lawrence, Kan.; Professor A. D. Morse, Amherst, Mass.; Hon. Eugene Schuyler; Professor Jesse Macy, Grinnell, Iowa; Dr. Albert Shaw, Ed. *Minneapolis Tribune;* and Professor Arthur Yager, Georgetown, Ky. Among other members of the Historical Association who aided the new school of Historical Economics to a successful organization were President Andrew D. White and Professor Herbert Tuttle. These facts are put on record, because they are among the most significant results of the second annual meeting at Saratoga. At the first annual meeting, the American Historical Association was organized. The next year there appeared a variation of the historical species, called the American Economic Association, which has already reproduced its kind.[1]

MEETINGS OF THE AMERICAN HISTORICAL ASSOCIATION.

The original plan of the Secretaries of the Social Science and Historical Associations for section meetings in the auditorium and committee-rooms of the High-School Building at Saratoga was given up, for various practical reasons. The former body returned to its accustomed place of assembly in Putnam Hall, where the Historical Association held its first public meetings last year through the courtesy of the elder society. The younger body assembled Tuesday morning, September 8th, in the Bethesda Parish House, which, with its comfortable lecture-room and reading-rooms, was

[1] The Connecticut Valley Economic Association, organized in Springfield, Massachusetts, January 4, 1885, with Professor John B. Clark, of Northampton, as President, and Dr. E. W. Bemis as Secretary. This Association, now numbering over fifty members, was lately recognized as a local branch of the American Economic Association, which thus became two hundred strong.

kindly placed at the service of the Association by the rector of the parish, the Rev. Joseph Carey, D.D., one of our members. Morning and evening sessions were held in the lecture-room during Tuesday, Wednesday, and Thursday, September 8th to 10th, with an average attendance of *circa* one hundred and fifty persons. The reading-rooms were occupied in afternoon sessions by the founders of the American Economic Association, numbering, at the organization, September 10th, between forty and fifty, and now embracing over one hundred and fifty members.

MORNING SESSION.

TUESDAY, *September* 8, 1885.

The Association was called to order at ten o'clock, by President Andrew Dickson White, who briefly reviewed the history of the American Historical Association. In deference to Goldwin Smith, the guest of the Association, who had consented to deliver the opening address, President White announced that instead of reading at length his own paper on "The Influence of American Ideas upon the French Revolution," which had been advertised in the programme as the opening address of the second annual session, he would merely comment briefly upon the following printed analysis of his subject, which had been put into the hands of the audience.

President White's Syllabus—Introductory.

Documentary and other sources of information.—Mr. Rosenthal's "America and France." Brief review of the period preceding the French Revolution,—want of practical direction to French ideas of liberty and reform,—general influence of America,—Lecky's statement as to the different ways in which this influence was exercised on philosophical thought through Voltaire and Rousseau,—special American influences.

I. The Influence of Franklin.

1. On the nation directly. 2. On political thought through Turgot and Condorcet. 3. On militant literature

through Champfort and Morellet. 4. On orators and poets of whom Mirabeau and Chénier are representatives. 5. On the conduct of public affairs through Vergennes and others.

II. The Influence of Jefferson.

1. Reciprocal influence between Jefferson and the leaders of French thought.

2. Jefferson's influence through Lafayette,—through Rabaut St. Etienne,—through the Girondists,—federal ideas of the Girondists.

3. Relations with Robespierre falsely imputed to Jefferson,—the dividing line between American influence and want of influence in the French Revolution.

III. The Influence of Barlow and Paine.

1. Early suggestion and speedy promotion of monarchical ideas by Joel Barlow. 2. Similar work by Paine—Translation of his "Common Sense." His after efforts in modifying anarchical action.

IV. The Influence of French Soldiers returned from the American Revolution.

1. *Lafayette:*—His influence in bringing on the French Revolution,—in shaping it,—his draft of the Declaration of Rights.

2. *Rochambeau:*—His character,—peculiarities of his growth in Americanism.

3. *Ségur:*—Light thrown on French feeling regarding America by his memoirs,—his own impressions.

4. The French common soldiery,—effect of familiarizing them with ideas of liberty and equality,—Mr. Rosenthal's excellent statement of this,—detection by Arthur Young of American ideas in the early revolutionary ferment,—Ethis de Corny at the destruction of the Bastille.

V. The Influence of Frenchmen returned from American Travel.

1. *Chastellux:*—Difference in spirit between that and the recent race of travellers in America,—causes of Chastellux's great influence.

2. *Brissot* "de Warville":—Clavière's letter of suggestions,—Brissot's book,—Brissot the first open Republican in France.

3. *Mazzei, Crèvecœur*, and others.

VI. Summary of the American Influences.

1. *Familiarity with the idea of Revolution.*

2. *Strength given to French ideas of Liberty:*—New meanings of the word Liberty,—Chénier's ode,—Fauchet's sermon,—Anacharsis Clootz's tribute.

3. *Practical shape given to ideas of Equality:*—Vagueness of these ideas previously,—remarks of Sir Henry Maine on this,—proofs from the constitutions of 1791, '93, and '95.

4. *Practical combination of Liberty and Equality into institutions*, republican and democratic. Brissot's writings,—Camille Desmoulins' *La France libre*,—indirect testimony of Portiez.

5. *An ideal of republican manhood:*—Chénier's apostrophe to Washington and Franklin. Pompigny's drama in which Franklin is put upon the stage,—Washington similarly treated in Sauvigny's tragedy of "*Vashington, ou la Liberté du Nouveau Monde*,"—extracts, to show its absurdities,—summary, to show its real significance.

6. American influence on the French Revolution a source of just pride,—that influence coincident with the *greatness* of that Revolution,—it ceases when the Revolution degenerates,—typical hostility to American institutions shown by St. Just and Clootz.

VII. Lesson of this History for America To-day.

1. How this American influence on Europe was lost.
2. How, alone, it may be regained.

Abstract of President White's Remarks.

President White's comments upon the above syllabus were summarized at the time of their delivery as follows:

As to the sources of information on the subject, he referred to a large collection of French journals, pamphlets, and fugitive writings of various sorts in his own possession. He also

mentioned in terms of praise Mr. Rosenthal's "America and France." He then showed the influence exercised on various eminent Frenchmen by Franklin, Jefferson, Barlow, and others, tracing it among the French philosophers—the men of letters, the orators and poets, and the men of affairs. He showed the reasons for supposing that the "federalism" for which the Girondists were sent to the guillotine was largely due to Jefferson, but disproved the old charge that Jefferson held friendly relations with Robespierre and the extreme anarchists. Mr. White showed various proofs that while the early lovers of constitutional liberty in France were strongly American in their ideas and sympathies, Robespierre and his associate extremists were not; that they disliked the American constitution, with its two branches of the national legislature, its power given to the Supreme Court, the veto power of the President, and the separation into States. Mr. White also traced out the influence of French officers and soldiers who had served in America, also of French travellers in America at that period, concluding with a summary of the American influences in giving French ideas of liberty—in the first place, development, and, after that, practical direction toward a moderate republic. To show the admiration of Frenchmen for the American Republic at that time he cited Crèvecœur's admiration for the Greek and Roman names given to townships in the State of New York, and the deification of Washington in a great French drama in blank verse performed at the Théâtre Français in 1791. In this drama Washington was represented as reciting blank verse in honor of the Supreme Being at the "altar of the country," erected on the banks of the Delaware, and bewailing the loss of his son, whom Lord Dunmore was represented as carrying away from Mount Vernon, regardless of the fact that "Providence left Washington childless that a nation might call him father." Mr. White also showed Franklin represented as declaiming platitudes in another drama.

In conclusion he dwelt upon the moral of the whole history, which was that American influence abroad was gained

by fidelity to republican doctrines and by honesty and integrity in the administration of public affairs; that it had now been largely lost by American mis-government, especially in our great cities, so that American republican government is now pointed at in Europe rather with word of warning than with admiration. He insisted that if the proper influence of American institutions abroad is to be regained it can only be by reforming our system in various parts, and, above all, in maintaining and extending a better civil service through the country at large and a better system of administration in our great cities.

Abstract of Goldwin Smith's Address.

Goldwin Smith, of Toronto, Province Ontario, was then introduced to the audience by President White. The following is a brief synopsis of his address on "The Political History of Canada," which held the best attention of his hearers:

The British Empire, he said, was made up of different elements—India, the military dependencies, the crown colonies, and the self-governing colonies. The self-governing colonies were really independent nations, bound to the mother country only by a nominal tie, though the moral tie was still strong. Americans were hardly conscious of the recent extension of Canada and the growth of her aspirations. She had been made up of loyalist refugees united to a conquest on which self-government had been bestowed. The provinces before the insurrection of 1737 were ruled by royal governors, and toryism prevailed in the colonial government as in that of the mother country. The affair of 1837 was rather a petty civil war between colonial parties, than a rebellion against the British government. It was followed by the concession of responsible government and by the union of the provinces, so that Canada was turned from a pair of vice-royalties into a single republic. This was done with the usual British avoidance of a change in forms, merely by an alteration in the instructions of the governor. Great Britain was the land of constitutional fiction, and her

fictions had led the world a strange dance. Other reforms followed, particularly the disfranchisement of the State and Church. Party government also began. When the great issues were exhausted, party became mere faction. The struggle of factions at last produced a dead-lock. To escape from that dead-lock the statesmen had recourse to a confederation of all the provinces of British North America. The Trent affair also helped to frighten the provinces into confederation for mutual defence. The different elements of the constitution, those derived from the British monarchy, and those derived from American federation were described. By British statesmen confederation was probably regarded as a step to independence. Had the American colonies taken out their independence in this peaceful way, British emigration would not have been diverted to Australia, and American politics would not have received the revolutionary bias afterward manifested in secession. More power was given to the federal government in Canada than in the United States. The framers of the Canadian constitution believed that secession was caused by want of power in the central government of the United States, whereas it was caused solely by slavery. The appointment of the judges for life was a British feature in the constitution, and secured their perfect independence. They tried disputed elections to the general satisfaction. Party was for the first time formally recognized by the framers of the Canadian constitution. The question whether party could continue to afford a firm basis for government was the political problem of the day. The break-up of parties was seen in almost all European countries, and had begun even in the United States. The governor-general in Canada had become a mere figure-head. The acme of constitutional royalty would be the substitution of a stamp, to sign all acts of Parliament with, for a king. The occupation of Canada by British troops had ceased, none remaining but the reduced garrison of Halifax. Commercial independence and even diplomatic independence, so far as commercial treaties are concerned, had been practically conceded. The political tie, therefore, had become as

slight as possible, but undiminished in strength was the tie of affection for the mother country from whom Canada has never received any thing but kindness and justice, and whose thousand years of history she proudly claims as her own. Canadian confederation was still on trial and had great difficulties, both geographical and political, to contend with. A veil hung over the future. The speaker said he could not venture to discuss any question connected with the internal relations of Canada, but he might say that when fears of American interference had been expressed on his side of the line he had always told those who expressed them, he had never heard a single word of ill-will toward Canada, or a single utterance of desire to aggress upon her, or to interfere with her in any way; and as far as any action of the American people was concerned, her political destinies were absolutely in her own hands.

The delivery of Goldwin Smith's address[1] and President White's remarks occupied the morning session until nearly noon, when it was deemed advisable to adjourn, in view of the fact that many members of the Historical Association wished to hear Professor E. J. James' paper on "Schools of Political Science," which was to be read at 12 M. before the American Social Science Association. Adjourned until 8 P.M.

EVENING SESSION.

TUESDAY, *September* 8, 1885.

The Association reassembled at eight o'clock, Tuesday evening, in the lecture-room of the Parish House, President White in the chair. The first paper of the evening was by Jeffrey R. Brackett, a graduate of Harvard College in the class of 1882, and now pursuing historical studies at the

[1] A strong desire has been expressed by various members of the Historical Association that Goldwin Smith's paper on "The Political History of Canada" should be printed in full among the Papers of our Society. The proposition was early made to the author and was accepted by him, upon the condition that he be allowed sufficient time for revision. The author's subsequent illness, at once serious and protracted, prevented the execution of his purpose, and explains the non-appearance of his valuable paper in the first volume of Association Papers.

Johns Hopkins University. His paper was in the form of a "Report of Certain Studies in the Institution of African Slavery in the United States." An outline of this report is herewith presented.

Abstract of Mr. Brackett's Paper.

Historians are laying the greatest stress on the part once played in our politics by the slavery question, and hundreds of books for and against slavery are on our shelves. Though slavery exists no longer, there is manifest need of research into the *institution* of slavery, to know its laws, the interpretations of the courts, and, what is far more important, the historical reasons for the laws, and how far the laws were executed—the real spirit of the people toward the blacks. Such information will not be a contribution to our past history only, but will aid those who are trying to solve the so-called negro problem of to-day. Much can now be gathered from a generation that will soon be gone.

First, there should be an attempt at the bibliography of the *institution* of slavery, for many of the books under the title of slavery are of little or no value to the student; as, for example, the polemics for or against slavery based on the Scriptures. Secondly, one should study, in the best authorities on the different countries, the blacks as a people, in their home in Africa, in the West Indies, in Liberia, and in the reconstructed South, to note any effects of inheritance and environment. If students of the history of our own country must begin with the history of England, so surely must a study of slavery in America begin with the blacks of Africa; for the people of the South were face to face with no serfs of their own, or of a closely-allied race. It is desirable also to study slavery in more than one State, in Maryland, for instance, there was legislation incident to a border State.

The study in Maryland history is in three chapters: Slaves, Manumission, The Free Negro; the last, for example, being subdivided under such topics as restrictions against the ingress of free blacks; colonization, the efforts to free

the State of the black population; holding of property; trade and occupations; restrictions on meetings; vagrancy laws; punishments. The aim and method undertaken in these studies were then very briefly illustrated from two of these topics—occupations and meetings. The growth of restrictions put upon the free blacks in occupations, trade, and the holding of meetings were carefully noted step by step, in connection with any events that strikingly affected it. The restrictions in trade were seen to be, in general, a license-system based on good character; while in the generation before the war, as a result of the complications between abolition and slaveholding, two occupations were forbidden free blacks—peddling and navigating vessels. The legislation against meetings of blacks showed the influence of the Nat Turner insurrection; but the severe restrictions were, in turn, shown to have been neither universally desired nor rigidly enforced.

Special stress was laid on the need of supplementing the sources of history found in the statute-books, by a careful study of court reports, legislative journals, and newspapers, as well as the testimony of reliable whites and blacks who knew the old régime. The student must enter as much as possible into the life of the old plantation and the town. The danger of relying too much on the statute-books in such studies was shown by such striking examples in the history of Maryland as the plan for colonization in 1831 (see Laws of 1831, ch. 281), and the attempts at very restrictive legislation against the free blacks, in the so-called Jacob's bill of 1860 (Laws of 1860, ch. 232). By the law of 1831 the black population of the State was to be gradually reduced, and large sums were appropriated for that object; but the blacks were unwilling to leave their homes, and public sentiment did not call for a strict enforcement of the law—which remained in the statute-books for nearly thirty years—while the black population kept increasing greatly. The act of 1860 provided, on condition of its acceptance by the people of certain counties, the compulsory servitude of the free blacks of those counties; but it was rejected by overwhelm-

ing majorities in nearly every county, with one exception, and in that county it was never enforced.

Abstract of Mr. Winsor's Paper.

The next paper was by Justin Winsor, librarian of Harvard University. Mr. Winsor drew attention to "An Italian portolano of the sixteenth century," which has recently been acquired by the Carter-Brown Library in Providence, and displayed sketches of five maps from it, which showed the American Continent. He said he was not aware of the existence of another specimen of these early sea-atlases in this country, though they were not unknown in the great libraries of Europe, and particularly in those of Italy. The present specimen contained 28 maps skilfully executed. Two of the five pertaining to the new world are in drawing and geograpical theory different from the others, but were evidently a part of the atlas. With the exception of these two maps the atlas closely resembles two others,—one the highly-ornamented specimen exhibited at the Geographical Congress in Paris, in 1875, known to have been a gift from Charles V. to Philip II., and which is assigned to 1539, in the introduction to the photographic reproduction which has since been published; and the other known to be the work of Baptista Agnese in 1554, and reproduced in 1881 by Ongania, of Venice.

In these atlases and in three of the maps of the present specimen North America is made a separate continent, or at least not shown to be connected with Asia, and this was the belief which gained strength among cartographers ever after the discovery of Balboa in 1513. The other theory, as shown in two of these maps, that North America was but an easterly extension of Asia, following out the idea that induced Columbus to make his first voyage, still continued to prevail with some geographers long after the discoveries of Balboa and Magellan. With such cartographers the coast-line above the peninsula of California was given a north-westerly trend, and made to join the Asiatic coast toward the Gulf of Ganges. There is a series of early

charts preserved to us, which adhere to this theory—like the Sloane MSS. of 1530, in the British Museum, the engraved Finœus cordiform map of 1532, the Ruscelli of 1544, the Vopellio, of 1556, the Forlani, of 1560, the Myritius, of 1587; and more than a century after Columbus, his original theory was adhered to in the edition of Ortelius, published at Brescia, in 1598. A certain indefinite notion, that there might be a land-passage at the north, by which the traveller could pass, dry-shod, from America to Asia, even prevailed much longer. When Thomas Morton, who so harried the good people of Plymouth and Massachusetts, published his *New English Canaan* in 1636, he wondered after all if North America did not border on the land of the Tartars! In fact the notion lingered till Behring passed through the straits known by his name, in 1728.

Maps very like these two of the Asiatic connection are found in an atlas in the Biblioteca Riccardiana in Florence, and are known to have been made in 1550; and from this correspondence or appearance, as well as from certain tests of the condition of geographical discovery which the maps offered, it seemed clear that the Carter-Brown portolano, though not dated, is a creation of about the middle of the sixteenth century. In applying such geographical tests, however, we need to be cautious, for the cartographers indulged in those days in theory, which sometimes prefigured genuine knowledge, and there were elements of perverseness or suspicion which sometimes prevented their accepting the reports of rival discoveries. Sometimes, too, it took a long while for news to travel, and geographical data which were known in one seaport would remain a long time unknown in another, whence a map might emanate. For instance, none of these Carter-Brown maps indicate the explorations of Cartier up the St. Lawrence in 1534–35, though there seems to be indubitable evidence that the maps were made 15 years later. Again, we have in these maps Yucatan as an island, though Mercator has correctly delineated it in 1541 as a peninsula. While this bit of information failed our Italian map-maker, the fact that

Coronado about the same time went in search for the "Seven Cities" seems to have been known to him. Mr. Winsor applied various other geographical tests to these maps, following out the duration of the uncertain knowledge respecting the coast of Chili, and the confusion which for a long time prevailed respecting the interior river-system of South America, both of which, as treated in these maps, pointed to the middle years of the sixteenth century. He thought it quite certain then, by the method, extent, and detail of the geographical data, after estimating all errors arising from conjecture and ignorance, that the Carter-Brown portolano could be safely put at about 1550, and that its maker was of the school of Baptista Agnese, if not that famous cartographer himself. While it is an interesting specimen, it does not add much to our knowledge of the early cartography, except in a confirmatory way.

Abstract of Professor Tuttle's Paper.

Professor Herbert Tuttle, of Cornell University, next made some remarks upon new materials for the History of Frederic the Great of Prussia. He said that by "new materials" he meant such as had come to light since Carlyle wrote his life of Frederic; for English and American readers that work still represented the most advanced point that had yet been reached in the search for knowledge about the great Prussian king. In order to show clearly the progress that had since been made, it would be convenient briefly to enumerate the authorities from whom Carlyle had mainly drawn. These were classified into groups, such as the so-called pragmatic or documentary histories, the biographies, the general histories, military treatises, monographs, literary works of Frederic himself, and so forth. But the greater freedom which in most of the continental States now characterized the administration of the public archives had brought forth a number of elaborate historical works, representing, indeed, different national stand-points, yet all grounded upon original research among unknown materials. One of these was Arneth's *Geschichte Maria Theresia's,*

which in ability, in candor; and in literary style, was entitled to a leading place among histories in the German language. Droysen's *Geschichte der preussischen Politik*, though a work of less literary merit, was in its way representative of the other or the Prussian view of Frederic's wars and diplomacy. Mention was also made of the new edition of Ranke's collected works, of the Duc de Broglie's studies in the French archives, and of the publications of the Russian Historical Society. But the most important publications for the historical student of Frederic's age were those which had lately been issued in considerable abundance by the directors of the archives of the various European capitals. In this work Prussia, since the archives had been entrusted to a man who was himself a historian, Professor von Sybel, had taken the lead. Under his direction, and with the support of the academy of sciences, three different sets of publications from the secret archives of Prussia had been undertaken, all complete in their way, all marked by the most elevated respect for historical integrity, and all edited with the greatest intelligence. The most valuable of these was perhaps the *Politische Correspondenz Friedrich's des Grossen.* This included every letter written by Frederic himself, or by his secretaries under his direction, which could be regarded as political—that is, as bearing upon diplomacy and foreign policy. The eleven volumes thus far issued come down to the close of the year 1755.[1]

Hon. Eugene Schuyler supplemented Professor Tuttle's sketch of Prussian editors and archivists, by a brief account of historical work lately done in Russia.

The last communication of the evening was by Professor Ephraim Emerton, of Harvard University, who reviewed Janssen's "Geschichte des deutschen Volkes seit dem Ausgange des Mittelalters" (4 vols., 1885), with particular reference to the controversy which the work has kindled in Germany regarding the Protestant Reformation and the work of Luther. This review by Professor Emerton excited so much interest and provoked such thoughtful discussion

[1] Sept., 1885. Since then two additional volumes have appeared.

by Goldwin Smith, President White, and Professor Andrews, that it is here reproduced in full.

Professor Emerton's Paper.

The appearance of the fourth volume of Janssen's "History of the German People since the End of the Middle Ages" calls renewed attention to this, perhaps the most remarkable historical production of recent years. This volume, bearing the imprint "first to twelfth edition," brings the work down nearly to the close of the sixteenth century. The enormous popularity of the book among Catholics of all shades, the bitter opposition it has called forth, the extended polemic literature which has grown up about it, are all evidences of its extraordinary quality. We have become so accustomed to ignorant or wilful perversion of fact on the part of Catholic writers of history that serious criticism has not occupied itself greatly with them. When an author confessedly takes leave of his five senses before beginning his work, we may well commit him to the stern judgment of silence. And this Roman Catholic historians pre-eminently have done. They have rested upon a "higher law" of human thinking than that which admits authorities, laws of evidence, and rules of interpretation, and have substituted for these a "sacred" tradition, which has masqueraded under the guise of historic truth. They have rejected modern critical methods as the instigation of the devil, and have asked no higher sanction for their work than the "imprimatur" of some holy man,—bishop, pope, or what not.

Not so Janssen. He dedicates his book to the memory of his friend and teacher, Johann Friedrich Böhmer, a Protestant layman and a leader in the modern German historical school. He acknowledges himself a disciple of that school, and aims at nothing less than to demonstrate the essential truth of the Roman Catholic historical tradition by means of its method and in the fullest light of its great results. Such a programme might well command the attention of the learned world, and challenge the closest scrutiny as to its fulfilment. And indeed there can be little doubt that Jans-

sen has distanced all his predecessors on the Catholic side in the extent of his studies, his command of the endless material,—in short, in all that pertains to the technique of his profession. His equipment is better than that of any historian in the same field since Ranke. His declared method is that which has given the modern historical school its chief claim to recognition,—the painful search after facts and the gathering of them, without prejudice or tendency, into a narrative which shall have no other purpose than to put the story of the facts into a presentable shape. "Let the facts speak for themselves," is his alluring motto; and he enforces it by suppressing his own personality almost to the point of disappearance.

All this sounds very attractive. The average man accepts without much question the assertion that facts will not lie. And yet every one who has to deal with facts knows that nothing, unless it be figures, will lie so completely as facts. The question in every case of historical narration is not, "Has the man got facts?" but "What facts has he got, and how does he put them together?" There is never a controverted point on any subject upon which a vast array of opposing facts cannot be summoned to the argument. The decision must rest, not upon the number or the weight in avoirdupois of these facts, but upon the preponderance, one way or the other, of the whole body of evidence, rightly understood or interpreted. The historian cannot, if he will, withdraw his personality; for that very process of withdrawal is a piece of himself, and it brings into his work just the very personal element he has been trying to suppress.

And so it has fared with Janssen. He has collected a multitude of facts. His list of works consulted forms a valuable and almost complete bibliography of the period. His facts are interesting and significant. Yet they have been so skilfully selected and combined that the conclusion to be drawn from them will be almost invariably either false or only partially true. Janssen's thesis is that the Reformation was an error and a misfortune. He admits frankly that the Church of the fifteenth century had fallen a victim to many

and great abuses, that the high ideal of Gregory VII. had suffered a serious collapse. He does not shut his eyes to the corruption and worldliness of the clergy everywhere. In short, he admits the need of reform. His great point is that the Church contained within itself the regenerating forces which, if left to themselves, would have produced the great result without convulsion. In support of this proposition he devotes one large volume to a careful examination of the condition of Germany in the fifteenth century, in respect to its intellectual, industrial, and political development. He brings a vast mass of evidence to show that, in all these directions, Germany was in a process of vigorous and healthful activity. This is the most interesting and valuable part of the book. The fifteenth century has usually suffered in its presentation, from the greater dramatic interest of the following period. It has been mainly viewed as a dark background, on which the brilliant picture of the Reformation might be displayed to the best advantage. It is, then, a real service to the cause of historic truth to have thrown the light in upon this bit of darkness, and to have supplied the material for a wiser judgment in the future. We see here in Janssen's picture a land filled with every form of human activity. Universities were being founded, with schools to supply them; preaching was vigorous, practical, and universal; art was rising to heights hitherto unattained; commerce was stretching out its beneficent agency in all directions; a kingdom, coupled with the still imposing dignity of the empire, was striving to gather all these forces into its service, and, except for the factious opposition of a turbulent and selfish nobility, with a reasonable promise of success. Error and weaknesses there were; but a century more of this development might have sufficed so to repair and strengthen that the great results of mediæval life might have been preserved without doing violence to the sacred traditions of the people.

Into this fair garden of prosperity enters now the devil of fanaticism. Luther, with his attendant spirits, rouses all the demons of doubt, contempt, moral laxity, war, desolation,

and ruin. Men s minds are unsettled. They know not where to turn for security. All the old foundations are broken down, and new ones cannot be at once supplied. There follows a long period of bitter conflict. Civilization, instead of going on to fairer attainment, falls back. The new basis of faith fails to supply the ancient motives of action. Confusion and disorder culminate in the dismal horrors of a whole generation of warfare, whose wretched inheritance Europe is to-day enjoying.

This is Janssen's indictment against the Reformation: that it overturned without supplying a new structure of faith, which should lead men to new, healthful action. And here, again, a great service has been done. Never before has the shadow side of the Reformation been so skilfully and so convincingly presented. Protestants have sought to conceal it, while Catholics have handled it with such obvious unfairness that their arguments have fallen flat. Here, however, the attack upon Protestantism is made to proceed mainly out of Protestant lips. Every flaw of character, every contradiction of statement, every confession of weakness or insufficiency, has been sought out with the energy of a well-concealed hatred; and these are set forth here in a grand self-indictment, which seems to be unanswerable; and, if it be taken for what it is worth, it cannot be answered. Never again can the glamour of sanctity which has surrounded the names of the great reformers be allowed to gather about them. What was until now a familiar fact to scholars has become common property. We see these men, in all their human weakness, thrust out from their scholastic quiet to be the leaders in a great social crisis. From being mere closet theologians, they were called upon to decide questions of politics, of social ethics, of science even, which would have gone beyond the power of any one class of men in any age. The world had so long looked up to a single authority on all subjects that it could not at once learn to trust its own resources. The Pope was gone, but something must come in his place. Luther was forced to assume largely the very functions which, in his saner mo-

ments, he saw to have been rightly denied to any one man. Hence, a vast history of doubt, confusion, and contradiction, out of which, if we approach it with a mind open to these phases of its progress, great constructive forces were emerging, but in which, too, if our eyes are trained to the darkness only, we may see only disorder, retrogression, and decay.

Janssen has learned to profit by the great merits of the historical school in which he has been trained, but he has also suffered from its defects. It is the constant danger of that school that it tends to blind the student to the really great and decisive movements of human life. This danger has been curiously illustrated by the controversy which has arisen about this very book. The method of criticism has shared the weaknesses of the book itself. It has been mainly criticism of this or that single point of error, without much effective attack upon the drift of the whole work. It has, of course, been easy for Janssen to answer these criticisms by bringing out a new supply of facts, carefully selected to do their work, without much reference to their true place as historical evidence; and these answers have grown into a considerable volume, which he appends to his work.

The success of this work is, on the whole, gratifying. It proves that what people like best, after all, is not elegant language or brilliant generalization, but facts. We believe the facts, in this case, to be largely delusive, from their partial selection and arrangement; but the phenomenal success of such a structure as this shows the line upon which historical narration should proceed. It should gather its facts, not as Janssen has done, to prove a thesis, but to let them carry their own story in the light of a fair and reasonable interpretation, the result being the thesis for all future work. Not only for every Catholic, but more especially for every Protestant student of the Reformation, these volumes will be an indispensable aid to the clearness of vision in which their author is so singularly wanting.

MORNING SESSION.

WEDNESDAY, *September* 9, 1885.

The Association convened promptly for its second Morning Session on Wednesday, at ten o'clock. President White said that the Right Reverend C. F. Robertson, Bishop of Missouri, who was to have given the opening address, had found it impossible to be present at Saratoga, but that he had forwarded his paper, with the request that it be read by Professor Moses Coit Tyler. This paper has been printed in full among the papers of the Association (No. 4), but an abstract is herewith presented to introduce a report of the interesting discussion which followed the Bishop's paper. His subject was "The Purchase of the Louisiana Territory, and its Effects upon the American System."

Abstract of Bishop Robertson's Paper.

The addition to our national domain effected by this purchase was not an insignificant one, as is shown by the fact that it added to the United States a territory nearly four times as large as that comprised in the original thirteen colonies, and in it now is a population of nearly one fourth of that of the entire country.

The enormous productions of the soil in the valley of the Mississippi made necessary an outlet more convenient than that across the mountains to the East. Given such a territory, it would be but a question of time as to when the mouth of the river would be secured. The foreign powers who controlled it saw its value, but were steadily thrust out by the increasing and inexorable pressure of Anglo-Saxon force among the upper waters. The cession of the vast territory was but an incident in the peremptory demand for the mouth of the river, and the consequent outlet for produce. The land was almost thrust into hands as yet but little conscious of its value.

The purchase of foreign territory was then without precedent, and President Jefferson was at first inclined to think that an amendment of the Constitution would be necessary to perfect it. The apprehension that if there was any delay,

France might recede from the agreement, and the evident advantage of the purchase, caused these scruples to be overcome. At the time of the purchase there were but few white people living in the territory, and there was a vagueness about the boundaries and the resources of the region which was not cleared for fifty years after the time of its acquisition.

The first effect produced by the purchase was the creation of apprehensions that the addition of this great domain to the South and West would have a tendency to disturb the equilibrium of the political and commercial interests of the other portions of the Union; and that the addition of such weight on one side of the Ship of State would threaten dangerous oscillations in the steady bearing of the vessel. There were already sectional irritations in the country which this purchase deepened and widened. At a time when the great public burdens produced by the Revolution had to be distributed, the constitution of the legislative body became a matter of grave importance. This induced a resistance on the part of the commercial North to the agricultural South, in regard to the creation and admission of States out of this purchase.

In 1804 certain leaders of the Federal party conceived the project of a dissolution of the Union and the establishment of a Northern Confederacy on the ground that the annexation of Louisiana transcended the Constitution, and in fact created a new confederacy in which the relative rights of the original elements were endangered. These irritations were intensified by the complications occasioned to our commercial interests by the struggle in Europe, and the consequent embargo, and the resulting war of 1812; all of which brought disaster, especially to New England. This called forth denunciations from there against the policy of the general government, and threats of dissolution, which Great Britain sought to foster by the mission of John Henry from Canada to New England.

The Hartford Convention, in 1814, was called, to express the opposition of the New England States to the steady drift of the recent policy of the country, and it found the

final cause of the evils in the threatened inordinate growth of the country to the west and southwest. It declared against the admission of new States which would destroy the balance of power existing among the original States, and expressed the belief that the Southern States would first avail themselves of their new confederates in the West to govern the East; and finally the Western States would control the interests of the whole. The apparently simple matter of the addition of the large domain was found to effect profoundly the relations of all parts of the country, and embittered political complications for generations afterward.

The steady movement of the population westward, accelerated by the purchase, caused the extension of distinctly American principles, and induced the effort for their propagation, especially in the Spanish territory to the Southwest. The expedition of Miranda to Caraccas was the first of these enterprises. Its visible expression was in 1804–5, but it had its roots in diplomatic communications reaching nearly ten years back. Alexander Hamilton was greatly interested in it, and his strong desire to be appointed to command in the army and to rank second to Washington in the forces, raised just before the latter's death, was occasioned by his wish to be the Liberator of South America. As France was antagonizing the United States at the time, and Spain was its ally, and the one power guaranteed the possession of the other, Hamilton thought that it would be justifiable to attack France through the possessions of its ally in South America, and set them free.

The machinations of Burr in the year following were directed toward Mexico, and had in contemplation the establishment of an Anglo-Mexican empire, with its capital at New Orleans. The extension of the American spirit also came to affect Texas, and caused it to throw off its allegiance to Mexico; and then, in 1845, became part of the American Republic. Out of this grew the Mexican War, and the acquisition of the territory and wealth of California and Nevada, and with this the era of large fortunes and the consequent change of American habits of living.

A further natural effect of the Louisiana purchase was the necessary enlargement of the distinctly American policy, and the recognition of the place which this country, by reason of its position, must hold before the world. The indication of this policy was had earlier, but its distinct expression was made in 1823, in the Monroe doctrine, of the disposition of this country to declare its unwillingness that any new European combination should be had on this continent. This policy has become a part of the fixed, although unwritten, law of this country. Its assertion has been vigorously maintained, even while, with reference to the question of the transit across the Isthmus of Panama and in Nicaragua, as toward Great Britain, there are still unsettled questions that may hereafter cause disquiet.

The noble river, which, with its confluents, is the crowning feature of, and gives the distinguishing value to this purchase, drains half the continent. The Father of Waters, as Mr. Lincoln said, goes unvexed to the sea. With its head among the northern lakes, and its outlet in the tepid waters of the Gulf of Mexico, it binds together the interests of the varied latitudes through which it passes. In its majestic movement, in its constantly-increasing extent and sweep, it fitly symbolizes the history and future of the American Republic. This steadily and quietly moves on, drawing to itself without effort, and then carrying easily on its bosom the elements which had their rise in widely-separated regions, until they merge themselves in the benignant depth and width of God's great purpose in forming and maintaining the nations of the earth.

In all this destiny and work, the acquisition of this vast and fertile territory, with what has issued from it, plays a masterful part.

Judge Campbell's Remarks.

Judge Campbell of Detroit, Michigan, said he did not propose to discuss any of the questions suggested, but only to call the attention of the younger historians to the fact that there is much of the history of the Mississippi valley

still unwritten. Some degree of mystery has always hung over a part of the events which were of importance in leading to the acquisition of Louisiana, which was considered essential to the free navigation of the Mississippi River, without which there would have been great danger to the country. Mr. Bancroft, in the later volumes of his history, covering the period after the Revolution, has thrown much light on some parts of this subject. But a large part of the transactions bearing on it still remains obscure, although there is a great deal of material which a careful and diligent search will bring to light.

The people of the West became greatly interested in the question of opening the river, as soon as settlements began, and it was necessary to enable them to reach a market for their products. There was always more or less community of business and other interests between the people east and west of the Mississippi above the Ohio. The old province of New France, afterward divided so as to create Louisiana, had many families that were represented in both sections. After the British conquest many French settlers crossed the river, and their intercourse with their friends who remained in Canada and east of the Mississippi was never cut off. Many had business connections extending over both regions. Col. Vigo, who furnished George Rogers Clarke with the means and the information which enabled him to conquer Vincennes and secure that portion of the Northwest to the United States, was represented in a Detroit firm, and it is altogether likely that his commercial disasters were in some measure due to the failure of our government to refund his advances, which were not repaid until ninety-nine years after they were made.

It is very well known that the desire to get an outlet to the Gulf of Mexico led to many intrigues and combinations in the Southwest, and to schemes quite as illegal as Burr's. Daniel Clark stated that Wilkinson received regular payments from the Spanish Government, that passed through the banking house where he was interested in New Orleans. Various arrangements were made or attempted for the pur-

pose of securing custom-house and similar advantages to the inhabitants near the river. Other powers kept watch for opportunities to separate the Union by taking advantage of the remoteness of this region from any eastern outlet. Great Britain, after the Revolution, set on foot movements intended to secure possession of the west bank of the Mississippi, which were considerable in extent but failed in results. During the wars following the French Revolution, and when General Washington's administration was on unpleasant terms with the French Minister, a distinguished French General, Collot, was sent to explore the Western country for the evident purpose of seeing whether in the disturbed state of Europe and America something could not be done towards getting back a part of the old French possessions. He had been taken prisoner by the British at the conquest of one of the French islands where he was in command, and claimed that in violation of the terms of surrender he had been brought to this country and arrested on an unfounded civil action for the alleged unlawful condemnation of a ship, at the instigation of his adversaries. Being held to bail in what was then the large sum of $30,000, he could not well go abroad, and found his way down the Ohio and Mississippi where he escaped arrest by the American authorities who had been ordered to intercept him, and received timely warning against venturing within the British lines in the Northwest. He was so firmly convinced by what he saw and heard of the discontent of the people of the valley with their position, that in his report of his travels he devotes a chapter to the subdivisions which were, as he thought, certain to be made of the country west of the Alleghanies, and which he parcelled out into several defined regions or provinces to be dependent on or allied with the nations on the borders.

No treatment of the Louisiana question can be complete which does not take into account the previous demands and conduct of the Western people. The acquisition was the only thing which secured their satisfaction with the Union. If that purchase had not been made, and the control of the

navigation of the Mississippi had not been secured, we might—it is to be feared—have had a Union very different in appearance from what we now have.

Hon. Rufus King's Remarks.

Mr. Rufus King, of Cincinnati, concurred in the hints which Judge Campbell had thrown out for our young historians as to the field which yet lies untouched in the early history of the Mississippi. The events of the last century relative to that region, not only as to its growth and settlement, but the wars and political controversies which the possession of this river and valley had excited, are a subject worthy of more attention. He alluded to the electric effect which was produced among the people of the West in the beginning of the late rebellion by the premature outbreak of the Governor of Mississippi in planting a battery at Vicksburg to stop the navigation of the river.

But he had risen more particularly, he said, to notice a remark in the paper by Bishop Robertson, parts of which had just been read, in which he seemed to reflect upon the correspondence between Alexander Hamilton and General Wilkinson, relative to the Miranda expedition, as though it might be assimilated in its object to the subsequent scheme on the lower Mississippi, which was imputed to Aaron Burr.

He was not sure that he had caught the remark correctly, and hoped it would appear that he was mistaken. He would not have alluded to it but for the reason that in the so-called "Bryant's Popular History of the United States" there is such an expression, and, in fact, a charge of "fillibustering" made upon Gen. Hamilton (vol. iv., pp. 136, 140, 142, and *note*).

Mr. King said he had investigated the charge, and at Cincinnati the oldest inhabitants had never heard of the "men and boats" which are alleged to have been gathered there. He was assured by Mr. John C. Hamilton that there is no such "unpublished correspondence" between Hamilton and Wilkinson as intimated. He was therefore under the impression that there is no authority for such a charge.

Gen. Hamilton, no doubt, felt a strong interest in Miranda's plans, but only so far as it might tend to support him in the war then threatened between Spain and the United States, and in which he was to have had an important command. His correspondence and meeting with Wilkinson are disclosed in the fifth and sixth volumes of his works published by John C. Hamilton. Wilkinson being then the general in command of the troops of the United States at the West, the entire intercourse was official and perfectly legitimate in preparing for hostilities.

Abstract of Miss Salmon's Paper.

Miss Lucy M. Salmon, a graduate of the University of Michigan, was invited to read an abridgment of her paper on "The History of the Appointing Power of the President." This paper, as well as Bishop Robertson's, has since been printed in full by the Association (Number 5), but the following abstract is here in place:

The subject of the appointing power of the President may be considered under four heads: first, the theoretical stage, 1787–1789, or the question in the Philadelphia Convention and in the First Congress; second, the period from 1789 to 1829, or the power as exercised by statesmen both Federalist and Anti-Federalist; third, the spoils period, 1829–1861, including President Jackson's interpretation of the Constitution and the results of that interpretation; fourth, the reform period, including the culmination of the spoils system and the attempts to check the evil.

The framers of the Constitution were apparently influenced by three considerations to give the power of appointment to the President: by the custom in England, under the Articles of Confederation, and in the individual States. In England, the prime minister by gifts of office as well as of money had reduced the practice of corruption to a science; even among extremists none were found who openly advocated placing the power in the hands of the executive alone. Under the Articles of Confederation, all appointments had of necessity been made by the General

Congress; the majority were convinced that it was equally unwise to place unlimited control in such a body. In the various States there had been no uniform practice. In the majority, however, appointments had been made by both houses of the legislature, or by the governor with the consent of the legislature or his advising council; in no case had the method employed seemed perfect, and in some instances the complaints were loud. The question was how to avoid all the evils and embody all the excellencies of the various systems with which they were familiar. In the early stages of the Convention the tendency was, through recollection of the British rule and a clinging to the old Confederate idea, to give the appointment of officers to Congress and it was not until the closing hours that the present method was agreed upon. The question of removal was left open, but was made the subject of legislative action by the First Congress two years later. Four interpretations of the Constitution were advanced: first, that the President alone could remove an officer; second, that the power rested with the President and the Senate; third, that an officer could be removed only by impeachment; fourth, that the question must be regulated by Congress. Here again the tendency was at first to restrict the power of the President by requiring the consent of the Senate when removals were made, and again those were successful who believed in the dignity and responsibility of executive authority. After two months' discussion it was decided that the power of removal belonged to the President alone. The significance of the result is plain. It indicates a still higher development of the idea that the Executive must have substantial as well as nominal power and be held responsible for its use. When the Convention met in 1787, the Executive was considered a necessity to be hedged in by every possible means lest he should abuse the little power granted him. A long step in advance of this idea was taken before the Convention closed, but the result was only partially secured. If the leaders had hoped ultimately to gain more than this they did not venture to express such a desire. *The Federalist* had sought to quiet

the fears of those who complained that the Constitution gave the President too much control over appointments by saying that no one could fail to perceive the entire safety of giving him the power of removal if it must be exercised in conjunction with the Senate. This interpretation was accepted, but Congress in 1789 went still farther, and by construing the Constitution so as to give the President the power of removing at pleasure, acknowledged an authority in him not thought of by the masses of the people in May, 1787, and doubtless believed difficult, if not impossible, to secure when the subject first came up for discussion in May, 1789. No more important illustration can be found of the growth of the national over the Confederate idea than is shown in the progress made concerning the appointing power from May, 1787, to July, 1789.

During the first period of forty years two things combined to secure a wise use of the power: first, the high character of the Executives in office; second, the comparatively small number of positions to be filled. Yet every condition was present that at a later time was pleaded as an excuse for succumbing to the spoilsmen. No one of the early statesmen, however, sought to strengthen his position by using the patronage of the government for personal or party ends. Congress, too, kept close watch lest corruption should creep in. But while striving to check minor evils, they passed in 1820 the Four Years' Limitation Law without apparently realizing the use that could be made of it. It was only the discretion of Mr. Monroe and Mr. Adams that prevented evil results of the act before 1829.

The two conditions which had given a pure and efficient civil service for forty years were conspicuously absent during the second period. President Jackson introduced the system of rotation by removing one seventh of the office-holders in Washington and one eleventh in the government employ outside of the city, and all his successors adopted the same policy, either from choice or necessity. Those high in authority explained, "The government must be administered by its friends"; party managers threw off the

mask and cried, "To the victors belong the spoils"; while the people applauded and exclaimed, "Uncle Sam is rich enough to buy us all a farm." The very word *patronage* almost came into use during the period, and carried with it the old Roman idea of the claims which a patron had over his clients. At the close of the period, as the party in power felt itself in the throes of dissolution, these party claims were made more binding by the demand for political assessments. The condition of the country in 1861 was but a natural result of the lesson taught for thirty years, that public trust was to be used for personal and party purposes, and that traffic in office was a legitimate part of every politician's duty. Congress attempted many measures in regard to the question, but all its efforts were directed either toward legalizing the spoils system by introducing a general policy of rotation, or toward giving the Senate a share in the power of removal—a course almost equally objectionable, as is proved by the Tenure-of-Office act of 1867.

The period since 1861 may properly be called one of reform, though many of the worst features of the spoils system have found their culmination here. This is especially true of the influence acquired over appointments by members of Congress; a tendency in this direction had always existed, but it was greatly increased by the events of the war. At the close of the war, action on the part of Congress wa simperatively needed, as change in circumstances since 1789 had not been met by corresponding change in legislation. Two courses were open—either to effect a radical cure of the evils existing, or to offer a temporary palliative. Congress chose the latter alternative, and accordingly the same body that rejected the Jenckes' bill passed the Tenure-of-Office bill by an overwhelming majority. Congress persistently refused to give relief, and the events of 1881 showed that the battle for reform must be fought at once and with new weapons. The partial reform effected by the Pendleton bill of 1883 has been the result of twenty years' agitation, secured in spite of party organizers, and intended not to usurp in any way executive power, but by appropriate legislation to supple-

ment the authority conferred by the Constitution, as the First Congress supplemented it in 1789.

Abstract of Mr. Porter's Paper.

After Miss Salmon's paper, John Addison Porter, a graduate of Yale College in the class of 1878, and now a resident of Washington, D. C., was called upon to present an abstract of his paper on "The City of Washington: its Origin and Administration," which has since been printed in the Third Series, Numbers 11 and 12, of the Johns Hopkins University Studies in Historical and Political Science. The paper began with a statement of the reasons which led Congress, in 1783, to decide on having a permanent meeting-place. There resulted between the year 1783 and 1790, an active competition for the honor, by six States. Of the many places named for the site, some were the largest cities, such as New York, Baltimore, and Philadelphia; others were small towns; still others were unsettled tracks of land, which it was proposed that Congress should cultivate and control according to its pleasure. Through the early debates of Congress on this subject, there was an evident concurrence that the State which received the Capital should do *something* to promote its prosperity. Maryland, in 1778, and Virginia, in 1779, agreed to cede any district ten miles square within their borders which Congress might decide to occupy as the permanent seat of government.

The drift of opinion was plainly against the selection of a State capital or a large city, for fear that local laws might interfere with the jurisdiction of Congress. In the final acceptance of the Potomac site, Hamilton and Jefferson appear to have had some share. By a stroke of "practical politics," they yoked the Capital and Funding bills and mustered enough votes from their henchmen to pass both bills. It is to be noticed, however, that North Carolina joined the Union just in time to cast her five votes in favor of the Potomac site. Without this slender complement, it is doubtful if the measure could have been passed. It was practically a victory of the "Solid South," over the New

England and Middle States. It was a compromise that the great city of Philadelphia was allowed to serve as a capital until the buildings of the Federal town on the Potomac should be completed.

Looking back at that era, one can see that the decision of Congress was regarded by the country at large with indifference. The disappointed members expressed their disgust in loud tones, but the citizens were never wrought up to a great pitch of excitement over the enactment, as some contemporary statesmen had prophesied they would be, simply because it was not expected, or intended, at that time, that the Federal city would ever attain to any magnitude or especial importance. If it should harbor Congress decently while passing the laws, it would be fulfilling its destiny, in the opinion of most men. Only a few of the far-seeing ones of that time believed that the city merited constant care and development at the hands of Congress. One of these men was Washington himself. The bill accepting the grants of Maryland and Virginia gave him an extraordinary latitude in the choice of the site. He might have planted the city anywhere "between the Eastern Branch of the Potomac and the Conogocheague." The tract included between these streams is more than eighty miles in length. The President had long been familiar with this whole region.

Three Commissioners were appointed to serve with him and the lines of the new Territory of Columbia (as the Commissioners informed Congress they had determined to call it) were run, April 15, 1791. The government struck a very advantageous bargain with the farmers who owned the site. The former, without advancing any cash, stepped into the possession of real estate to-day valued at more than fifty millions of dollars. The farmers got £25 per acre, for such of their land as was built on by the government; and they also received one half of the small lots which the government proposed to sell to individuals. The plan was to pay for all of the government buildings out of the proceeds from the sales of these lots. But this proved to be impracticable,

owing to stagnation in the real-estate market of Washington, after the first few years of speculation.

The city was plotted by Major L'Enfant, a Frenchman of ability and some experience, who had gained the friendship of both Washington and Jefferson while serving in the revolutionary war. Being arrogant and unmanageable, he was soon removed by the Commissioners, to make room for Ellicott, a self-made Pennsylvania engineer, who continued to plot the city upon a magnificent scale. L'Enfant drew his inspiration from old-world models, supplied him, perhaps, by Jefferson, who while abroad had studied critically the plans of the principal European capitals. At the time the city was laid out, the scheme was thought by most persons to be chimerical.

The States of Virginia and Maryland had raised and presented nearly two hundred thousand dollars, as a sort of premium for the site. This sum was soon exhausted in the construction of the new public buildings, and, in 1796, Congress was obliged to authorize a loan of three hundred thousand dollars to carry forward the work. Maryland was afterward prevailed upon to lend one hundred thousand dollars, at a time when the credit of the general government was at a very low ebb.

The Capitol was designed by an amateur, Dr. Wm. Thornton, a native of the West Indies, and, like L'Enfant, a friend of Jefferson. The corner-stone was laid with masonic honors by Washington himself, September 18, 1793. The details of the building, rather than the cost, are to be criticised. But at that time there was scarcely a professional architect of note in the United States. The mobilization of capital and labor was little understood; so the actual work done on the building cost more than it should have. In its day and generation the White House, or "President's Palace," as it was at first called, seemed very grand and spacious, yet the need of a new private residence for the President (leaving the old one for public receptions and the transaction of official business) is familiar to the present community.

When Congress moved to Washington, in 1800, the city

was in a sorry condition, with few good roads, a single rough sidewalk, miserable dwellings and stores, and no large hotel. These discomforts afterward made even the Anti-Federalists more favorably inclined to the improvement of the city. A detailed plan for beautifying it was submitted to Congress at one of its early sessions by Washington himself, but, though accepted by both houses, was afterward abandoned.

Of the several plans discussed for the government of the *District* of Columbia (as it soon became known in popular parlance), the one which was finally adopted by Congress provided for the appointment of the highest local officer by the national legislature. In this way, it was thought, the management of local affairs would be in harmony with the national administration. After further reflection, Congress decided to delegate the active administration of local affairs to the residents themselves. But by this act they did not abandon final authority over the city or responsibility for its welfare. The city was incorporated in 1802; and from this time the powers of the local government were gradually increased, until, in 1820, they ranked with those of the average American municipality. The mayor was elected by the residents.

The work of beautifying the city proceeded slowly; as the country grew, the attention of Congress was turned to other matters. Meantime, while government aid was withheld, the citizens were subjected to a heavy drain to care for the unusual street area; the local laws were in dire confusion, for they were a medley of obsolete laws from Maryland and Virginia and occasional enactments of Congress. The local debt rolled up; the local government was characterized by parsimony and inefficiency; the country at large grew ashamed of its shabby capital. This, in brief, was the condition of affairs at the breaking out of the civil war.

Then came the marvellous influx of men and money during those years of unparalleled activity and excitement; for the first time, Washington seemed destined to fulfil the dreams of its illustrious founders. But the subsidence of

excitement and the withdrawal of men and capital developed a period of lethargy; the golden opportunity was in great danger of being lost. Under these circumstances a few energetic citizens became interested in pushing forward the improvements on a comprehensive scale. Their over-zeal soon ran up a startling debt, which resulted in the abolition, by Congress, of the old form of government in 1871, and the substitution of a system resembling that in vogue in our Territories.

With an analysis of the methods of Washington government and of the principal men who served under it in the re-creating of Washington, the latter half of Mr. Porter's paper was mainly concerned. Chief of these men, both by reason of his position and his ability, was the notorious "Boss" Shepherd. Details were given as to his work in Washington, and accountability for the immense sums which passed through his hands, in reconstructing the city, as revealed in the testimony during the two Congressional investigations, of 1872 and 1874, which latter resulted in the establishment during the latter year, of still a new form of government, by Commissioners. Mr. Porter gave reasons for maintaining that the Territorial form of government as applied by Congress to the District of Columbia was necessarily a costly and unscientific experiment.

The paper closed with a practical discussion of the advantages and disadvantages of the present plan of governing the city by Commissioners, which plan was accepted by Congress in 1878 as permanent, until departure from it seemed to be demanded for the welfare of the capital. The disfranchisement of such a large number of citizens at the national seat of government itself, is contrary to the theory and practice of our political policy. So much capital as is now flowing into Washington and being expended in real estate and other improvements, cannot be adequately guarded and equitably expended, in the long run, without the safeguard of the ballot in the hands of the citizens themselves. Washington offers an unique chance for the experiment of a property-qualification in the ballot, in all questions of mu-

nicipal finance and expenditure for local improvement,—(1) because such a system would not have to depend, as in other cities, on the "popular will," too often controlled by selfish and corrupt "bosses," but could be adopted, at any time by Congress, by reason of its supreme authority over the District of Columbia; (2) because an unprejudiced examination of the facts in the case leads to the conclusion that the general government is bound, in equity, to assume the whole, or a major portion, of the present enormous bonded debt of Washington (over twenty millions of dollars), contracted mainly because of its presence and at the hands of its appointed officers, and toward meeting which, under the present system, very little satisfactory progress has been made or is likely to be made.

After Mr. Porter's paper, a Committee on Nominations for the new board of officers was appointed by President White. The Association then adjourned until 8 P.M.

EVENING SESSION.

WEDNESDAY, *September* 9, 1885.

The Association was called to order by President White at eight o'clock. The first matter proposed by the President was a discussion of the subject of Municipal Government, for which there had been no time after the conclusion of Mr. Porter's paper in the morning session. Goldwin Smith,[1] upon invitation, spoke upon the question. Mr. Eugene Schuyler was then called upon for remarks, but he expressed a reluctance to continue the discussion, saying it belonged more properly to the Social Science than to the Historical Association. Dr. H. B. Adams, while agreeing with Mr. Schuyler in the idea of excluding practical politics from the Association, said a word in favor of the historical study of municipal institutions. He said, classical history was the history of cities and their politics. The Italian republics, the French communes, the Flemish and the German cities represented the best life of the middle ages. The mod-

[1] Goldwin Smith promised to embody his remarks on Municipal Government with his own paper on "The Political History of Canada."

ern constitutional State is largely the product of the chartered rights of mediæval towns. The English colonies in North America were in no small degree the product of merchant associations, born of the mediæval guilds in English cities; for example, the Plymouth, London, and Massachusetts companies. Our colonial government, with its governors, councils, and burgesses, was copied from Old English corporate and municipal life. A study of municipal institutions, past and present, shows at once the origin and tendencies of modern democracy.

President White then called upon Miss Marion Talbot, of Boston, for a report of the studies and discussions of the Political Science Club, which was organized in Boston, in the winter of 1884–5, by members of the Association of Collegiate Alumnæ. Miss Katherine Coman, Professor of History in Wellesley College, gave, by invitation, an account of the studies in local history begun by the graduates of that institution. She also presented, by request, a written report, prepared by another lady, of the historical work in the Old South Meeting-House in Boston, a report which was printed in full by the *Boston Daily Advertiser*, September 11, 1885. H. B. Adams then gave a sketch of the historical work accomplished by the "Society to Encourage Studies at Home," a sketch printed by *The Independent*, September, 17, 1885.

The principal paper of the evening was then presented by Irving Elting, of Poughkeepsie, N. Y., upon the subject of "Dutch Village Communities on the Hudson River." Although the paper has been printed in full in the Johns Hopkins University Studies in Historical and Political Science (Fourth Series, Number 1), the following abstract is here given, in connection with a report of the discussion which followed the reading of the paper.

Abstract of Mr. Elting's Paper.

No two rivers have been oftener compared than the Rhine and the Hudson; indeed, the Hudson has been frequently termed the "Rhine of America." Between these rivers

there exists, unnoticed by the traveller, and unnoted, for the most part, even by the historian, a bond of union formed by the institutional relationship of the village communities, which have had their existence, with similar customs, similar laws, and similar forms of government, on the banks of each stream.

Turning to the Old World, one finds that, notwithstanding the encroachments of the feudal system, the earlier, freer, community-life, with the customs of common land-tenure and of government by freemen, met in general assembly, survived in some of the more secluded portions of the country,—notably in the forest regions of the lower Palatinate east of the Rhine, and in these northern provinces of the Netherlands,—Friesland, Groningen, and Drenthe,—whose free peoples Rome never conquered, and whose right of self-government no haughty baron ever suppressed.

From Holland and the German Palatinate, where the feudal system had never gained the foothold which it had secured in France, and even in more distant England, came the first settlers who were to lay the foundations of New York State. A short-sighted policy on the part of the States-General of Holland led to the granting (under the charter of "Freedoms and Exemptions," as it was called) of a monopoly, in both land and trade, to the West India Company, and to the establishment, in true feudal fashion, of "seignorial fiefs," or manors, on the banks of the Hudson. The beginnings of governmental life in New Netherlands were, therefore, unfortunate for the growth of free institutions. All the more noteworthy and commendable is the persistent and successful struggle of the "sturdy and independent yeoman" of Holland in fighting his way toward free, representative government, in the face of the difficulties which beset him.

The details of this struggle for popular rights in and about New Amsterdam show that the Dutch brought to the new country a rich heritage in their love of liberty which unfavorable conditions could not crush out. More liberal charters were granted by the States-General, and, as

early as 1641, came the recognition of the people's voice in affairs of government, by the election, in popular assembly, of "Twelve Select Men,"—all emigrants from Holland. The step toward freedom gained at this time was never lost. The representatives of the people repeatedly demanded, for New Amsterdam and the neighboring settlements, the municipal privileges to which the Dutch were accustomed, and, in 1646, the inhabitants of the village of Breuckelen (now Brooklyn) were given the right of electing two Schepens, or magistrates, with full judicial powers, as in the fatherland. Those who opposed the magistrates in the discharge of their duties were to be deprived of all share in the common lands adjoining the village.

Thus, side by side with the growth of free institutions in early New York, is to be found a common land-tenure, accompanied by many of the customs of the Germanic village community. Everywhere existed the ancient pound, and the distinction between meadow-land, wood-land, and the "Bouweries," or "home-lotts." What is now City Hall Park in New York, bounded by Broadway, Nassau, Ann, and Chambers streets, was, as late as 1686, perhaps much later, known as the village commons, where the droves of cattle were sent morning and evening to pasture.

These village rights of common land-tenure were accompanied in New Amsterdam by rights of common participation in the deliberative assembly of the people, as was the case in the forests of Germany centuries before. But the principle of popular representation was not fully recognized in the province until the danger of English conquest induced the governor and his council to call the assembly of 1664, for which two deputies were elected by plurality vote of the inhabitants of each of the various towns. Even such a popular assembly as this, however, was not able to resist the tide of events which, in September, 1664, swept New Netherlands from the hands of the Dutch and placed it under English rule.

This change in government had little effect upon the character of the population, or upon their village customs;

the Dutch element predominated to such an extent that the English language did not supplant Dutch as the language of the people until about the beginning of the present century, and the records in the offices of the clerks of Ulster, Orange, and Dutchess counties show that the common lands held by the various communities were not, in most instances, divided into individual holdings until about the same time.

Soon after the English took permanent possession of the country, two village communities—the adjoining towns of Hurley and New Paltz, respectively Dutch and Huguenot in their origin—arose on the west side of the Hudson River, not quite a hundred miles from its mouth. Both of these villages present features peculiarly interesting to the student of institutional history.

The Hurley Commons, granted by royal patent to a number of Dutch settlers in 1709, existed for a century under conditions which forbade any sale of a share in the land to one not an inhabitant of the town. When, in 1806, the townspeople petitioned the legislature of the State for a division of these common lands, the partition was made, in the true Teutonic fashion, according to the needs of the inhabitants,—a definite share being given to each person "as shall have supported a family and resided within the said corporation the term of two years next before making such partition, and who shall, during that time, have followed some trade or occupation," though he had never before been a freeholder of Hurley. Even if this does not show a "periodic partition," it gives evidence of that distinctive feature of ancient communal land-holding,—the use of a portion of the common domain for distribution among new families.

The town of New Paltz, lying just south of Hurley, was, in 1677, granted by patent covering some 36,000 acres to twelve proprietors, all of them Huguenots. The patentees are said to have been called the "Twelve Men," or "Duzine," and to have had both legislative and judicial powers in town affairs. Three years before the death of the surviving patentee—Abraham, son of Louis Du Bois—the twenty-

four proprietors of the New Paltz entered into an agreement dated April 21, 1728, which established the local government of the "Twelve Men" by popular election, and authorized them to fix titles "according to the severall Divisions and partitions that have been made between them [the patentees] by Parole without deed, and the other parts thereof yet remaining in Common and undivided * * * within the bounds of the aforesaid Pattent." The "Twelve Men," under their authority conferred in the agreement of 1728, to lay out the land to be divided "in Twelve equal shares and Divisions soe that the one is not of more vallue than the other," had the lots set off regularly from time to time, of the same size and shape, adjacent and numbered from one to twelve in each division,—the north and south divisions together constituting one long strip (or tier) of similar lots, running for the most part north and south, parallel to the Wallkill. Almost all deeds of New Paltz property, executed after the signing of the agreement of 1728, and before the general partition of the lands by the State legislature at the beginning of the present century, contain some reference to this method of division.

About a hundred years after the granting of the patent, fifty-two proprietors of the New Paltz, for the common defence of their territory, entered into an agreement dated April 30, 1774,—a fact which shows both the persistence of their village—community customs, and the extent to which the subdivision of the common property had been carried. Among the fifty-two who signed this document, each indicating his share of the common domain, were:

Daniel Lefever, $\frac{1}{64}$ part; Ands. Bevier, $\frac{1}{105}$ part; Noach Eltinge, $\frac{1}{17}$ part; Jacob Louw, $\frac{1}{468}$ part; Benjamin I. Freer, $\frac{1}{234}$ part; Abraham Doiau, $\frac{67}{720}$.

Even after an act of the legislature incorporated the township under the State government, the inhabitants of New Paltz met yearly in popular assembly to choose their "Twelve Men." There remains record of the election of these officers as late as the year 1824, and one of their number, Daniel DuBois, lived until 1852. Thus he, as the sur-

vivor, has the unique distinction of perpetuating in his own person, beyond the middle of the nineteenth century, an institution older than the Christian era.

The settlement of New Paltz, entirely Huguenot at first, received the Dutch element (destined to play an important part in the town's history) in the person of Roeloff Elting, by his marriage with Sara DuBois, in 1703; and it is a significant fact in the history of local institutions, that these two stocks of the early New Paltz settlers came respectively from the German Palatinate and the province of Drenthe in Holland, where to-day, in the clearings of the Odenwald, and on the marshy peat-fields of Drenthe, are to be found almost perfect types of the primitive Germanic mark.

From the banks of the Rhine the germs of free local institutions, borne on the tide of Western emigration, found here, along the Hudson, a more fruitful soil than New England afforded for the growth of those forms of municipal, state, and national government, which have made the United States the leading republic among the nations. Thus, in a new and historically important sense, may the Hudson River be called the "Rhine of America."

Mr. Kingsbury's Remarks.

Upon the conclusion of Mr. Elting's paper, Mr. Frederick J. Kingsbury, of Waterbury, Connecticut, said: I have been greatly interested in the paper which has just been read. No one can understand the history of New York without a knowledge of the Dutch settlement and its influence. The evidences and influences of that settlement, especially in their minor details, are year by year fading and growing more difficult to follow, and all labor in the direction of discovering and describing them is of great value, and should be heartily encouraged.

The position of the Dutch in New York is somewhat peculiar. Having obtained a firm foothold in the province, they were not driven out nor antagonized by the change of ownership, but were simply *overslaughed* by the numbers of the English colonists. Consequently they retained their

language and habits in great purity for a very long time, and two hundred years after its first settlement, portions of New York were almost as purely Dutch in these respects as Holland itself.

We are raising just now a new school of intelligent and enthusiastic young students of history who are paying much attention to local manners and customs, and I seize this opportunity to suggest that, among other subjects, they should undertake the tracing of Dutch words and names, many of which have become localized and sometimes Anglicized, and whose original meaning and use are in danger of becoming wholly lost.

I would like to give a few examples to illustrate my meaning. Some years since a gentleman, residing in Central New York, happened to mention to me that where he lived they were in the habit of having picnics at a certain pond on a mountain, and that they called them "fly-parties." I think he thought it was because they had them in fly-time. I asked him if the lake was marshy or swampy, and he said it was. I remembered hearing that the old "Fly-market" in New York, famous in its day, and of which some of you have doubtless heard in the ballad of the "Dogs' Meat Man," which began—

> "Near Fly-market, long ago,
> There dwelt a maid in a life of woe,"—

took its name from being near a swampy piece of ground called "The Fly," and not, as might have been imagined, from the number of its flies, and I told my friend that I thought it was this use of the word that had given the name to his picnics. I then thought I would verify my opinion. I examined every Dutch dictionary that I could find in libraries and bookstores without avail. The words "Fly," "Vly," "Flay," "Vlay," were nowhere to be found, not even in combination. I inquired of my learned friends without success. I finally wrote to the late Hon. Robert A. Barnard, of Hudson, who had been a merchant there in the days when a knowledge of spoken Dutch was almost a necessity to a

merchant doing business in that part of the State, and which it still may be in some of the interior towns. He supplied me with the information I wanted. He considered "Vly" or "Fly" as equivalent to swamp. "Kill" is a large brook, and "Mitje" a small one. I do not find either of these words in the ordinary Dutch dictionaries. I found "Vly" and I think the others may be found in Sewall's dictionary, published, I believe, in 1716, and afterwards in Capt. Mayne Reid's Adventures among the Dutch Boers in South Africa I found the word "Vlay" in frequent use. The Dutch settlers in South Africa went there not far from the time of the settlement of New Amsterdam, and here appeared to be words which were in common use in Holland two hundred years ago, and had since disappeared there, but had been retained in these widely-sundered colonies.

Again, there is in Salisbury, Conn., where there were early Dutch settlers, a hill, called "Barrack Matiff." I have inquired in vain for the origin of the name, though it was thought to be Dutch. My own opinion is that "Barrack" is a corruption of "Berg," from which it could easily be changed in a guttural voice, but as to "Matiff," I am in the dark. It may be "Mahtig," large or mighty—and then it may not. Will somebody find out?

On the east end of Long Island there is a common family name, "Schellinger," or "Skellinger," or "Scalinger," supposed by some to be a corruption of "Scaliger." Now, in the records of Easthampton and the neighboring towns this name is frequently spelt "Schellinx." Who can find out how, or why, or when "inx" was supposed to be the written equivalent of "inger."

I have a theory in regard to another word, but yet I have not a sufficient number of facts to support it. There are in many places about the country certain localities called a "Folly," sometimes somebody's Folly, sometimes simply "The Folly." Now, in some of these cases the name is clearly given on account of somebody's foolishness, but in others there does not appear to have been any foolishness in any way connected with the place, and in many cases I find

it applied to low, swampy tracts of land. Now my theory is that "Folly" in these cases is a corruption of the Dutch word "Flay," or "Vlay." Will not some one please furnish me with facts to sustain my theory?

Mr. Elting's Remarks.

In answer to certain questions raised by this discussion, Mr. Elting said: The patent which included the present site of Yonkers was granted to Van der Donck, and had no connection with Rensselaerswyck closer than that arising from the fact that the patentee had been the Schout Fiscal of the Van Rensselaer manor.

Many of the old Dutch words survive in local expressions found to-day among people who have lost knowledge of the original meanings. In a portion of the paper reference was made to the fact that what is now so familiarly known as the Bowery in New York City is so called because it was the "Bouwerie" or home-lot of Gov. Stuyvesant.

One who examines the records of the counties where the early settlers were Dutch will be struck with the frequency, in deeds executed before, and for many years after, 1700, of the word "Vly" or "Fly," used apparently in each instance to describe a low-lying piece of ground.

The word "Kill" survives in the Wallkill at New Paltz, the Fallkill at Poughkeepsie, the Fishkill farther south, the Catskill farther north, and in numerous other small tributaries of the Hudson.

If the descendants of the Dutch knew the tongue of their ancestors, who called every creek of importance a "Kill," we should not hear, as we often do along the Hudson, such a tautological expression as "Fallkill Creek."

Washington Irving and Benson J. Lossing have interpreted for us many of the Dutch names which have become inseparably connected with the Hudson River, and which may well serve as constant reminders of the historical significance of the early Dutch village communities of New York State.

Mr. Vennema's Letter on Dutch Survivals.

The following observations are presented by Mr. Elting from a letter written to him by Rev. Ame Vennema, a resident of New Paltz: "I think the great trouble in ascertaining the true meaning of the so-called 'old Dutch words' is due to three causes. 1. Some of them were words in *colloquial* use only, that never were committed to print. Of these some are provincialisms. My father came from the province of Groningen in Holland. When he speaks the dialect peculiar to that province I can scarcely understand him. I find still more trouble in understanding the dialect of the Frieslanders. 2. Some words that appear in writing in old church records, deeds, conveyances, wills, etc., have not been spelled correctly. I find in reviewing the old papers in my custody, and those in the Huguenot Bank, that the same word is spelled two or three different ways by the same writer. 3. Others can neither be found in print or in writing, and by being handed down orally have become much perverted by a change of the vernacular in sections where the Dutch was formerly spoken. In driving to Kingston one day with a friend, he called my attention to a hill overlooking that city from the south. 'That hill,' said he, 'is called *Cake-out*.' I thought for a moment, and he asked whether I did not know what it meant. He went on to explain, and I recognized the word as being 'kyk-uit,' equivalent to 'out-look.' By Anglicizing it he had made it almost irrecognizable.

"Now I have an opinion as to the probable meaning of the words on which Mr. Kingsbury wants light, and I will venture to suggest it: 'Fly,' 'Vly,' 'Vlay,' or 'Flay,' I take to be a corruption of our Dutch word 'Vallei,' meaning 'valley.' The accent of the word is on the *ultimate*, and if spoken fast the vowel in the first syllable is indistinct, a mere transitional sound, giving it the sound of 'Vly' precisely. Now, as a valley usually has a stream running through it, the land alluvial, low, soft, marshy sometimes, it does not require a great stretch of the imagination to make 'Vallei' applicable to the 'fly-market,' or the 'fly-picnic'

ground. Mohawk Lake *might* be called a 'Vallei,' lying between Eagle-cliff and Sky-top elevations. As to 'Barrack Matiff,' I agree with Mr. Kingsbury as to Barrack being a corruption of 'Berg.' But I think I can come a little nearer to 'Matiff' than 'magtig'—mighty. I would suggest 'massief,' meaning *massive*, a massive hill. As the 's' in the middle of a word was often long and sometimes crossed (f), it may have been taken for a 't.' In regard to sound there is not much difference between 'matiff' and 'massief.' Now about 'Schellinger,' 'Scalinge,' and 'Schellinx.' In the province of Gelderland, Holland, the usual termination 'ing' is changed into 'ink.' I could name a dozen families, all originally from Gelderland, whose names end in 'ink.' Now, may not the person who wrote the name Schellinx have come from that province? Or, better still, if there were more than *one* 'Schellinge' in Easthampton, may not the 'inx' be the plural? We speak, for example, of 'the Eltings': now, 'ings' sounds in Dutch *very much* like 'inx,' more so than in English; indeed, so similar are these two sounds that it is hard to distinguish between them. The word 'Folly,' I think, is also a corruption of 'Vallei.'"

After the above protracted discussion, which sought history in the survival of Dutch words, the Association adjourned. In consequence of various substitutions and alterations in the programme of previous meetings, to suit individual convenience or the necessities of the situation, certain appointments for Wednesday morning and previous meetings had been put over to the above evening session, which naturally resulted in deferring one or two papers until the following day, when the programme was satisfactorily concluded.

MORNING SESSION.

THURSDAY, *September* 10, 1885.

The Association met for its fifth session in the Parish House, and was called to order at ten o'clock by President White. The first paper presented was by Dr. Josiah Royce,

of Harvard University, on "The Secret History of the Acquisition of California." This paper was the substance of a chapter in Dr. Royce's forth-coming work on the History of California, in the "American Commonwealth Series." No extended abstract of the paper is necessary in this connection. The following will suffice:

Abstract of Dr. Royce's Paper.

During his studies in the library of Mr. H. H. Bancroft, of San Francisco, Dr. Royce discovered documents which gave a wholly new version to the expedition of Captain Fremont in the spring of 1846. The usual understanding of that expedition has been that our government desired to seize California in advance of the declaration of war by Mexico, and sent Fremont out for that purpose. The documents discovered by Dr. Royce, and verified by him at Washington and elsewhere, make it clear that the government was at that very moment in negotiation, through its consular agent, with the native population, in the hope of securing peaceful possession of the State. Why Captain Fremont did not carry this plan out the writer did not attempt to show, and refrained from all criticism of the Captain's conduct.

Abstract of Dr. Jameson's Paper.

Dr. J. F. Jameson, Associate in History, Johns Hopkins University, then read one of three papers introductory to the study of the Constitutional and Political History of the Individual States. He expressed a belief that the time was an exceptionally favorable one for work in American constitutional and political history, and called particular attention to the great need of good work upon the history of the States since the Revolution. Little work of this sort has hitherto been done, and much of even this is not good. The States have played a very great part in our constitutional life, but a very small one in our histories. Yet the view given by these is distorted if we leave the States out of account. Their political history, also, deserves great attention, especially as its study will be particularly useful in

correcting a common defect in our political histories, that they do not get down to the people themselves and give us the history of public opinion upon politics. The labor which such work will entail is great; but it will be rewarded by making much better rounded our conception of our history, and perhaps also by stimulating interest in the State politics of the present time, and so doing something to prevent excessive centralization. In conclusion, the contents of the other papers of the series, containing illustrations of the same subject, were described. Dr. Jameson's papers will appear in the Johns Hopkins University Studies, Fourth Series, No. 5 (May, 1886).

Mr. Dewey's Report.

Davis R. Dewey, Fellow in History, Johns Hopkins University, then made a brief report on a proposed "History of American Political Economy," which has been undertaken by Dr. Ely, Mr. Woodrow Wilson, and Mr. Dewey. Although the United States has not contributed much of positive value to the science of political economy in itself, it is considered profitable not only to gather up and present the conclusions of such economists as this country has produced, but also to show how the peculiar conditions of American life have modified economic theories as held by many Americans.

Abstract of Dr. Channing's Paper.

Dr. Edward Channing, of Cambridge, said that while gathering material for a course of lectures on the territorial development of the United States, he had made an illustrated index of the maps in the Harvard College library bearing on our early history. Three of these index-maps he had redrawn on a very large scale. The first, a copy of a map made by Moll in 1720, well illustrated the truth that the historical geography of our own country was full of interest, for on this map was a line showing Louisiana as extending to the Rio Grande, an extent awarded to it by the best students of the present day. Still more remarkable was a line bounding the French possessions to the west. This line followed what Moll probably regarded as the

height of land separating the rivers which flow into the Atlantic Ocean through Hudson's Bay, the Gulf of St. Lawrence, and the Gulf of Mexico from those which empty into the Pacific. Of course such a line on such a map is no authority. It is interesting, however, as showing the map-maker's idea of the westward extent of the French North American possessions. Another noteworthy feature of this map was the positive way in which the maker confined the English colonies to the sea-coast.

The second map showed the extent of the country claimed by the English king in the seventeenth century, as shown by the lines of the several colonies according to their charters. These lines Dr. Channing had drawn to the Pacific Ocean, according to the terms of the documents. He stated, however, that he did not remember to have seen them laid down on any map of the seventeenth or eighteenth century farther west than the 110th meridian of longitude west of Greenwich. The southern limit of the Hudson Bay Company's possessions, upon which our present northern boundary between the Lake of the Woods and the channel between Vancouvers' Island and the continent depends, was shown as following the water-parting between the rivers emptying into Hudson's Bay and those which flow into the Gulf of St. Lawrence ; and, also, as following the 49th parallel, from about 76 west longitude, westward. It was stated that the maps are not conclusive as to which of these lines was the true one.

The third map was a rough copy of one bearing date of 1755, the topography of which was by Kitchin, though the other details were by an unknown hand. This map showed the French and English claims to North America just before the outbreak of the Seven Years' War. It was interesting, too, as giving the chain of water-courses between the Lake of the Woods and Lake Superior as the boundary between the French provinces of Canada and Louisiana. On this map had also been drawn the boundaries of the Province of Quebec under the "Quebec Act," as they were laid down on Faden's map of 1777. Every one was familiar with the extent of that paper province, but for one the speaker had

never realized what a menace it was to the English colonists until he had actually seen it depicted on such a large scale.

Upon the conclusion of Dr. Channing's remarks the Secretary emphasized the importance of the study of American historical geography, and called attention to Mr. C. W. Bowen's valuable monograph on the "Boundary Disputes of Connecticut," and to Mr. W. B. Scaife's study of the "Boundary Dispute between Maryland and Pennsylvania."[1] He also mentioned the map of the United States recently issued by Doctors Hart and Channing of Cambridge for purposes of graphical and historical illustration.

Abstract of President White's Second Paper.

President Andrew D. White, read the final paper of the morning session on "The Development of the Modern Cometary Theory." The writer traced the steps leading from the early doctrine, supposed by the Fathers to be based on Scripture and morals, that a comet was a fire-ball flung by an angry God at a wicked world, to the annunciation of the prophecy of Gemma that comets are heavenly bodies obedient to the fixed laws. He cited largely from documents, including a large array of "comet sermons" in various countries, and especially in Germany and New England. He showed how the scientific conception of comets was gradually developed in spite of conscientious ecclesiastical opposition from the speculations of Gassendi and Bayle to the scientific proofs of Doerfel and Halley. He incidentally showed that the usual view regarding a bull of Pope Calixtus III. against the comet of 1456 has in it some truth and errors—that comets were regarded by both Catholics and Protestants down to a recent period as "signs and wonders" powerful for evil, but that the triumph of science over the supposed "religious" view had resulted in good both to religion and morals, instead of shaking religion and morals, as so many good men for many centuries had feared. This paper is published in full in the *Popular Science Monthly*, October, 1885.

[1] Printed afterward in the *Pennsylvania Magazine of History and Biography*, October, 1885.

EVENING SESSION.

THURSDAY, *September* 10, 1885.

The closing session of the Second Annual Convention of the American Historical Association began at eight oclock, Thursday evening, President White in the chair. The first communication of the evening was by General Geo. W. Cullum, of the United States Army, who read a paper on the disposal of Burgoyne's troops after the Saratoga Convention of 1777.

Abstract of General Cullum's Paper.

The article was a selection from the chapter entitled "The Struggle for Freedom," which will form a part of the forthcoming narrative and critical history of America, vol. vi., edited by Justin Winsor. The articles of the convention were quoted in full. Burgoyne outwitted Gates in stipulating for the speedy embarkation of the English Army for Great Britain, on condition only of not serving again in the war in North America. This would release a fresh army for service in the colonies, and Burgoyne wrote to his friend, Col. Phillipson, "I dictated terms of convention which save the army to the state for the next campaign." The bad faith of the British commander in the concealment of arms, colors, and treasure was shown by citations from the Riedesel Memoirs and by testimony of the British themselves. Burgoyne's dishonorable plan of breaking his oath in the articles of convention when he heard of Sir Clinton's successes was discussed. On the other hand Congress interposed its authority to nullify the too favorable conditions which Gates had granted. In defiance of the meaning of the articles, and upon various pretexts, Burgoyne's army was detained in the country until the close of the hostilities. The terms of this convention and the manner of their fulfilment were compared with the conditions accompanying the capitulation of Charleston in 1780, and the convention of Closter-Seven in 1759. The act of Congress overruling the agreement between Generals Sherman and Johnston in 1865 was referred to, and, in general, it was shown that the

supreme authority has frequently broken unsatisfactory treaties upon motives of expediency, using frivolous pretexts to cover the odium of bad faith.

Abstract from Mr. Schuyler's Paper.

The second paper was by the Hon. Eugene Schuyler, on "Materials for American History in Foreign Archives." He said that during the last fifty years historical scholars the world over have seen the necessity and advantage of an exact and careful study of the documents preserved in public government offices and in private families. Owing to their efforts most foreign archives, especially those relating to foreign affairs, have been well arranged and taken care of, and often placed in separate fire-proof buildings, and have generally been made accessible to historical students who possess proper credentials. Much has been done to complete their archives by enlightened governments by procuring copies of papers preserved elsewhere. Thus, the French government has had for a long time copyists at work on the valuable series of French official papers in the Imperial Library at St. Petersburg, to which they were given by some Russian who had bought them as old paper during the French Revolution. Russia is now having copied for publication all of the despatches sent home by foreign ministers resident in Russia down to the end of the last century. Even little Roumania is doing similar work. In France, Russia, Germany, Spain, Austria, and especially in England, systematic publications of the contents of the archives and of the most valuable and interesting papers, are in progress. In England 127 volumes of calendars of state papers have already been published by the government, all of them edited by well-known scholars. None of these volumes of the foreign or colonial series, which especially interest us, have yet reached a later date than 1668. In our own country several States have made very full publication of documents relating to their early colonial history, such as Massachusetts, New Jersey, Pennsylvania, and especially New York, and this has been done at very great expense. The French government

has done very little in this way. Collections of the papers of our early statesmen have been bought by the government and deposited in the state department. The Franklin papers were recently purchased in England and placed there. But our government has the proud distinction of being the most illiberal of all that I know in the use of its archives. Access to them is hedged in by so many restrictions, that practically they are almost inaccessible to the historical student. Kapp, in the prefaces to his lives of Steuben and DeKalb, gives an amusing account of the rebuffs he met at the hands of Gen. Cass and Mr. Seward. Our archives, being composed almost solely of papers of American origin, are notoriously incomplete. There exist in the various archives of Europe papers of the utmost importance to our history, and it may safely be said that when these become accessible, the history of the American Revolution and of the treaty of peace will have to be entirely rewritten. In England there is a vast mass of material; diplomatic papers from the foreign office, military papers from the war office, colonial papers, order books, journals, petitions and correspondence of loyalists, etc., etc. Besides the papers in the British Museum and other public institutions, there are valuable papers in private hands. Such are the Lansdowne, Germain, and Dartmouth papers. The archives of France, Holland, and Spain are also very rich, owing to our early and intimate relations with these countries. In various archives of Germany there are full reports and journals of the officers of the German troops employed in America. Even in Russia there is material about America, especially in the despatches from London, Paris, and The Hague. The Russian Embassy at Paris kept a secret agent at Philadelphia during the Revolution, who sent home minute accounts, containing even plans of the various battles. Although these various collections have been in part consulted by special students, they are for the most part entirely unpublished, and some of them are almost unknown. It is important to us as a nation that a full catalogue should be made of all such papers, and that the most important should not only

be copied but printed. Two students rarely read a document in exactly the same light, and it is important therefore that we should have the text in our hands, and not depend upon the impressions even of the most eminent historians. Mr. Schuyler requested the Association to take action of some sort to impress upon the state department and Congress the necessity of procuring and publishing copies of documents so eventful to our history.

Mr. Sheafer's Historical Map of Pennsylvania.

The Secretary then exhibited and described an Historical Map of Pennsylvania, for its absent author, Mr. P. W. Sheafer, of Pottsville, Pennsylvania. The principal features of this map were: 1. It indicated the various territorial acquisitions from the Indians. 2. Territory claimed by Connecticut. 3. Boundaries disputed between Pennsylvania and Maryland, and the resultant Mason and Dixon's Line. 4. Indian paths and the roads first opened. 5. The site of Fort Pitt, and other celebrated strongholds. 6. Battle-fields. 7. Dates of the settlement of towns and the incorporation of counties. One of the most interesting features of the map was its attempt to preserve Indian names formerly in use, and to reproduce a *fac-simile* of Indian inscriptions that have been left upon rocky surfaces.

RESOLUTIONS BY THE AMERICAN HISTORICAL ASSOCIATION.

The literary exercises of the Association were now ended and business was declared in order. Mr. C. W. Bowen introduced the following resolution which was adopted:

Resolved: That it is especially important that the beginnings of history in our newer Territories and provinces should be fully and carefully recorded. We, therefore, urge upon members of the American Historical Association residing in those portions of America, and upon all others interested in historical studies, the organization and maintenance of local historical societies which shall preserve files of local newspapers; collect fugitive documents; provide memorial sketches of men of mark; interest towns in carefully pre-

serving their records and maps; secure full accounts of all that can be learned of the aborigines, their tribal organization, arts, customs, and implements; make careful descriptions of the location and nature of any Indian mounds, painted rocks, or other places of importance in the history of the red man; give complete accounts of all Indian wars or raids; mark the location of buffalo trails, cattle trails, forests, and treeless tracks which are likely to be lost; record the date of the first settlement of towns, with the names and origin of the first settlers; describe the temporary social organizations and popular habits which existed before customs and laws crystallized; and in every other way supply abundant material, likely to be lost by general neglect, for the minute study of our history in future years.

The Secretary, in the name of the Committee on Nominations for Honorary Membership, appointed by the Executive Council, then introduced the following resolution, which was also adopted:

Whereas: The American Historical Association is deeply sensible of the debt which historical science owes to its oldest and most distinguished living exponent; and is desirous of signalizing its own devotion to pursuits which Leopold von Ranke has so conspicuously followed, therefore,

Resolved: That the President of the Association be requested to transmit to that historian its first testimonial of honorary membership.[1]

[1] The letter addressed to Dr. Leopold von Ranke by the Hon. George Bancroft ran as follows:

WASHINGTON, D. C., Dec. 5, 1885.

LEOPOLD VON RANKE:

My Venerable Master and Dear and Most Highly Honored Friend.—We have had many historical societies in our several States. We have lately founded the American Historical Association, which is to devote itself to the affairs of the United States of America. We wish for your benediction; and for that end we ask you, and, as yet, you alone, to accept the proof of our reverence by consenting to become our honorary member. We have meant to make this a special homage to yourself as the greatest living historian. I add my personal request to the request of the society that you will give us this mark of your regard. We thank Heaven that you approach your ninetieth year in the enjoyment of health. May you long continue to enjoy the ever-increasing proofs of the honor and affection in which you are held by your fellow-men. Ever your very affectionate and devoted scholar and friend, GEORGE BANCROFT.

The Hon. Eugene Schuyler then introduced the following resolution:

Resolved: That the Executive Council be instructed to represent to our government the advantage and the advisability of cataloguing all documents relating to the history of the United States down to the year 1800 existing in the official and private archives of Europe, and of copying and printing the most important of them. The resolution was adopted.

Professor E. B. Andrews, of Brown University, moved that the Secretary be instructed to express to the authorities of the Bethesda Parish, Saratoga, the hearty thanks of the Association for the use during this session of the commodious halls of the Parish House.

The motion was carried unanimously.

BOARD OF OFFICERS, 1885–6.

The Committee on Nominations appointed by President White at the close of the morning session, September 9th, now declared themselves ready to report, and recommended for the ensuing year the following Board of Officers, which was unanimously chosen:

President: George Bancroft.

Vice-Presidents: Justin Winsor, Charles Kendall Adams.

Secretary: Herbert B. Adams.

Treasurer: Clarence Winthrop Bowen.

Executive Council (in addition to the above-named officers): William B. Weeden, Charles Deane, Franklin B. Dexter, William F. Allen.

RESOLUTIONS OF THE EXECUTIVE COUNCIL.

The following resolutions were passed by the Executive Council in business meetings held during the second annual convention:

1. That a committee of three be appointed on Finance, viz.: The Treasurer, C. W. Bowen; William B. Weeden, Esq., Providence, R. I.; and Major-General Cullum, New York City.

2. That about one half the sum of money which has already accrued from fees for life-membership, or an amount not exceeding $600, be invested, and that the remainder of the life-membership fees now paid into the treasury be available for the necessary purposes of the Association.

3. That the question of obtaining a charter, with the plan of incorporation by Congress, or in the District of Columbia, after the manner of the American Academy of Sciences, be referred to Messrs. Justin Winsor, Theodore F. Dwight, and H. B. Adams.

4. That the question of nominations for honorary membership in foreign countries be referred to Justin Winsor, C. K. Adams, and E. Emerton.

5. That at present only one honorary member in Europe shall be elected to the American Historical Association, and that that one be Leopold von Ranke.

6. That the question of the place and time for the next meeting of the Association, with the suggestion of Washington and Easter week, 1886, be referred to Justin Winsor, W. F. Allen, and H. B. Adams.

TREASURER'S REPORT TO THE AMERICAN HISTORICAL ASSOCIATION.

GENTLEMEN : Your Treasurer has the honor to report as follows :

RECEIPTS.		EXPENDITURES.		
For annual dues from 228 members, at $3 each, amount	$684 00	Paid for printing of bills, receipts, small circulars, etc., postage and copying	$180 80	
For life membership from 43 persons at $25 each, amount	1,075 00	Paid Messrs. Geo. P. Putnam's Sons for printing the Association's publications	597 17	
For balance on account of sales of the publications of the Association, from Messrs. Geo. P. Putnam's Sons	71 18	Total expenditures as per vouchers		$777 97
Total receipts for year ending Sept. 1, '85	$1,830 18	Leaving amount on hand, Sept. 1, '85,		$1,052 21
		Since Sept. 1st the Treasurer has received from members, for annual dues for 1885–6		108 00
		Making a total now in the hands of the Treasurer of		$1,160 21

CLARENCE W. BOWEN.

We have examined this account and find it correct.

CHARLES DEANE,
WM. B. WEEDEN,
Auditing Committee.

SARATOGA, Sept. 8, 1885.

LIST OF MEMBERS

OF THE

AMERICAN HISTORICAL ASSOCIATION.

* Life Members.

*Adams, Charles Francis, Jr., Esq., 23 Court Street, Boston, Mass.
Adams, Brooks, Esq., Quincy, Mass.
Adams, Charles Kendall, President of Cornell University, Ithaca, N. Y.
Adams, Professor George B., Drury College, Springfield, Mo.
*Adams, Henry, Esq., 1603 H Street, Washington, D. C.
Adams, Professor Henry Carter, University of Michigan, Ann Arbor, Mich.
*Adams, Herbert B., Johns Hopkins University, Baltimore, Md.
Akins, Thomas B., D.C.L., Barrister at Law and Commissioner of Public Records of Nova Scotia, Halifax, N. S.
*Alger, Hon. R. A., Detroit, Mich.
Allan, Colonel William, McDonogh P. O., Baltimore Co., Md.
Allen, Professor W. F., Madison, Wis.
Anderson, Rev. Dr. Joseph, Waterbury, Conn.
Andrews, Rev. Dr. William G., Guilford, Conn.
Andrews, Professor Elisha Benjamin, Brown University, Providence, R. I.
Andrews, Israel Ward, D.D., President Marietta College, Marietta, O.
Angell, James B., LL.D., President University of Michigan, Ann Arbor, Mich.
Appleton, Wm. S., Esq., Boston, Mass.
Archibald, the Hon. Sir Adams G., K.C.M.G., Halifax, Nova Scotia.
Armour, George A., Esq., 1932 Calumet Avenue, Chicago, Ill.
Atkinson, Professor Wm. P., Mass. Institute of Technology, Boston, Mass.
Babson, Hon. John J., Gloucester, Mass.
Bagg, Dr. M. M., Secretary of Oneida Historical Society, Utica, N. Y.
Baird, Rev. Charles W., D.D., Rye, Westchester Co., N. Y.
Baird, Professor Henry M., Univ. of City of N. Y., New York City.
*Balch, Thomas Willing, Esq., 1412 Spruce Street, Philadelphia, Pa.
Baldwin, Hon. Rufus J., Minneapolis, Minn.
*Baldwin, Simeon E., Esq., 69 Church St., New Haven, Conn.
*Bancroft, Hon. George, Newport, R.I.
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